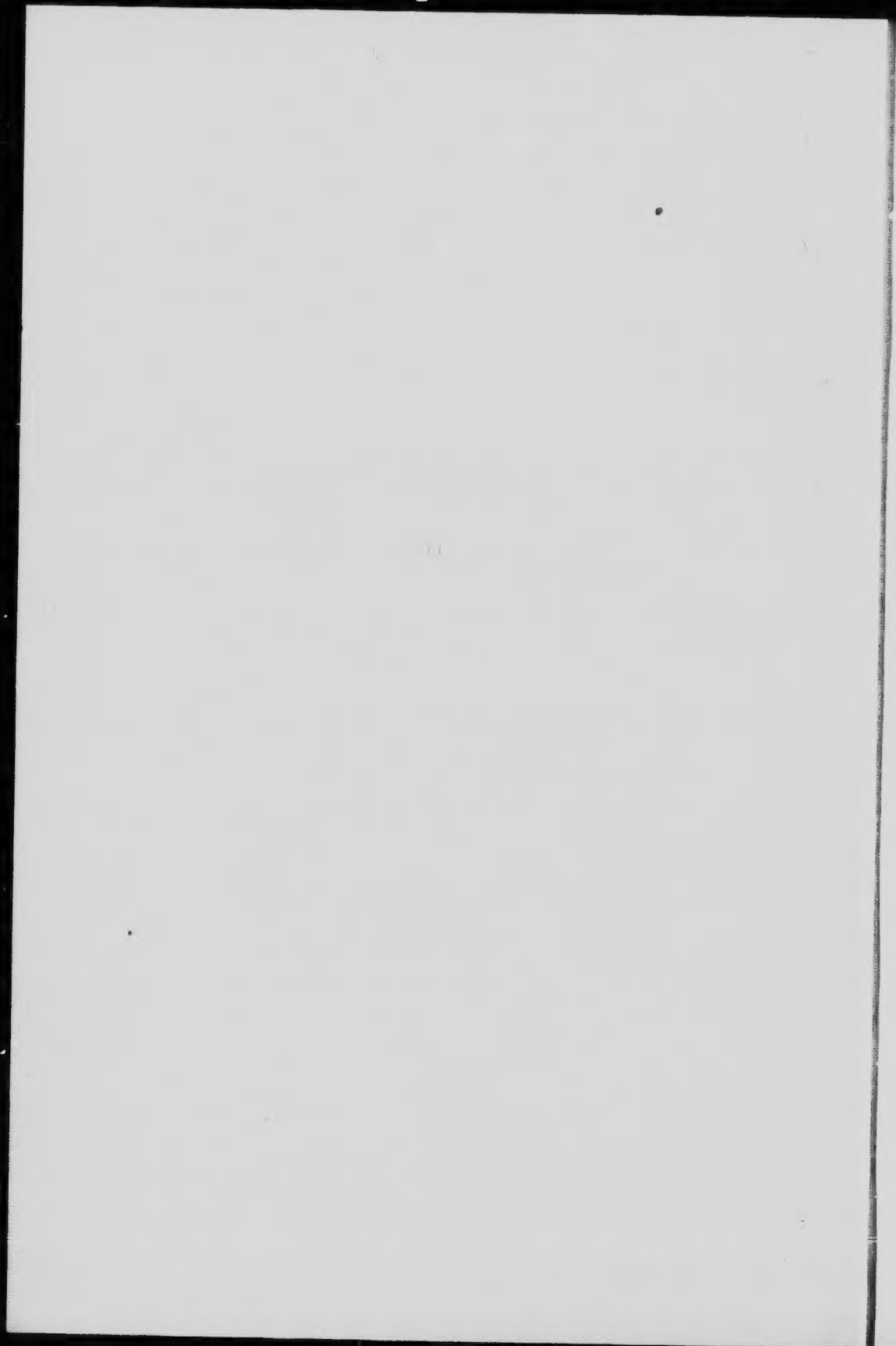




EXTRA - PROVINCIAL CORPORATIONS

A Sketch of the Operation and Effect of
Extra - Provincial Licensing Acts in force
in the various Provinces of Canada

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TORONTO
THE CARSWELL COMPANY, LIMITED
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The following pages were prepared by way of a brief sketch for the use of manufacturing and other commercial corporations carrying on an inter-provincial business in Canada. Their scope is, therefore, confined to this class of company, though it has been necessary to discuss principles which are applicable to foreign and extra-provincial companies generally. The author is not without hope that they may prove of service to the legal profession in dealing with the subject of extra-provincial licenses in its present decidedly unsatisfactory aspect.

E. W. W.

TORONTO, 1st June, 1911.

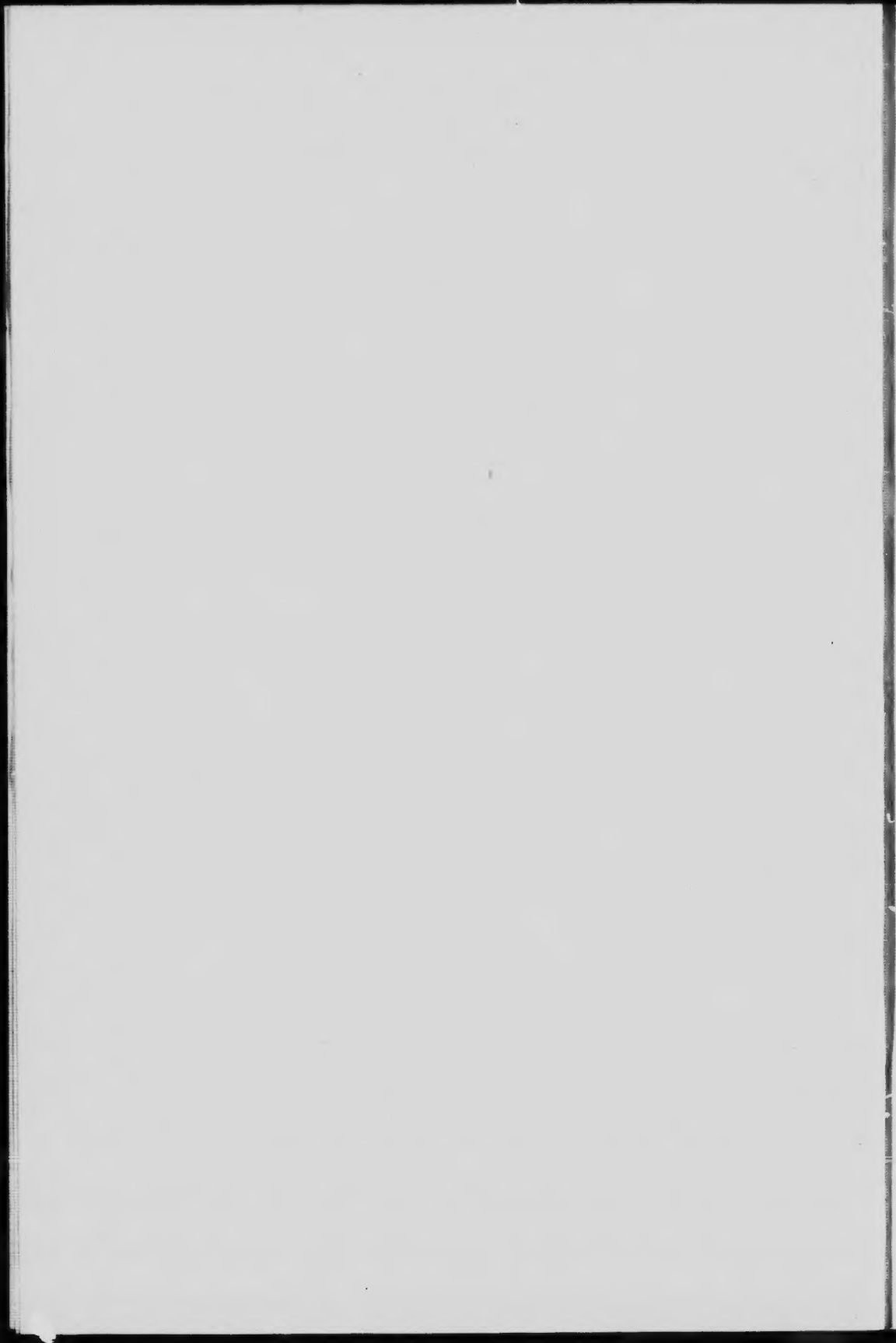


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GENERAL NATURE OF THE ACTS.

Importance of Extra-Provincial Licensing Acts.

During the past ten years or more joint stock companies carrying on business in Canada have been compelled to give increasing attention to a class of legislation adopted by a majority of the provinces under the name of "Extra-Provincial Licensing Acts" or "Foreign Companies Acts." Owing to its very drastic provisions the most recent of these Acts, that of British Columbia, which came into force on the 1st July, 1910, has received more attention than its predecessors in the other provinces; but most of the provinces have Acts of a similar nature, though more limited in scope.

The idea seems to be still prevalent that these Acts merely create a "commercial travellers' tax," and they have, as a matter of fact, in some provinces taken the place of older Acts under which commercial travellers were taxed. But their operation is a much more serious matter than a mere tax; and if a company carries on business in any province under such circumstances as to bring it within the operation of one of these Acts, the consequences of the infringement may be very serious.

In general the Acts in question require companies incorporated outside the enacting province to comply with certain formalities and pay certain fees before being allowed to carry on business in the province. For default in complying with these conditions companies are subjected to certain penalties and disabilities. In most of the provinces the Acts apply to companies incorporated by the Dominion Parliament as well as those incorporated in other provinces or in foreign jurisdictions.

Fiscal Operation of the Acts.

In one aspect these Acts represent a peculiarly awkward type of taxation. They are aimed primarily at ordinary manufacturing and other commercial concerns, but amongst these only incorporated companies are affected, and enterprises, no matter how large their extent, conducted by partnerships or individuals, are immune. Again, the amount of the fee imposed is, generally speaking, based, not on the actual capital of the company or the proportion of such capital employed in the province, but upon

the nominal or authorized capital, whether actually subscribed or employed, either within the province or elsewhere

History and Purpose of the Acts.

Apart from their character as constituting an awkward type of corporation tax, the history of the Acts indicates an ulterior object which places them in an entirely different light from that of a fiscal measure. Before the Confederation of 1867 each of the separate provinces then existing had exercised the power of creating corporations for ordinary commercial purposes, that is to say, for such purposes as buying, selling, manufacturing and dealing in goods, wares and merchandise; and this power the provinces continued to exercise after Confederation, though under the British North America Act the powers of the provincial legislatures were restricted to the incorporation of companies with "provincial" objects. At the time of Confederation, and during the years immediately following, questions relating to the incorporation and control of companies occupied no such prominence as at the present time. Commercial enterprises were largely conducted in the name of individuals or partnerships, and most of the commercial corporations of the present time date their establishment as corporations within the present generation. The comparative unimportance of the subject may partially account for the fact that the relative powers of the provinces and the Dominion in relation to the subject were not more clearly defined by the British North America Act (a)

While the number of joint stock companies was thus small the scope of their activities was correspondingly small, many of them confining their operations within the boundaries of a single province. It was natural, therefore, that the majority of such companies should receive their charters of incorporation from the local provincial authorities. With the extension of trade during more recent years the scope of ordinary commercial corporations has greatly widened, and it is now common for manufacturing and wholesale companies in Canada to carry on business to a greater or less extent in most or all of the different provinces.

Though the relative extent of the powers of the Dominion and the provinces over the subject of incorporation of companies is not clearly defined, it was not unnatural that with the growth of inter-provincial and foreign trade it should be felt that the proper authority to issue charters for such broader operations

(a) The constitutional questions arising out of the Acts are further dealt with, post p. 49.

was the Dominion Government, and the result was a growing tendency on the part of intending incorporators in the direction of having their charters issued by the federal instead of the provincial governments. This resulted in a loss to the provincial government of the revenue from incorporation fees. Complaint has also been made on behalf of the provincial authorities that companies whose operations were intended to be purely local and provincial frequently found it expedient to apply for incorporation by the Dominion authorities in order to secure powers which the provincial authorities had refused or would refuse to grant. One obviously intended effect of the Ontario Act was to check this movement towards Dominion incorporation. A company incorporated with its head office, for instance, at Toronto, found that upon taking out a charter from the Dominion it was still obliged to procure from the Ontario Government a supplementary authorization by way of license before being able to exercise in the province of Ontario the powers granted by its charter (b), whilst an Ontario charter answered apparently the same purpose as the Dominion charter and involved the payment of only one fee.

One by one, however, most of the other provinces have adopted similar legislation, in most cases more drastic than the Ontario Act; until now a company with a Dominion charter is compelled to become "licensed" or "registered" in most of the nine provinces before being able to exercise within the province the corporate powers conferred by the Dominion, the fees for such registration or license being in most cases on the same scale as those for the incorporation of local provincial companies. In connection with this supplementary authorization the provincial authorities assert their control over the corporate activities of the company by a variety of regulations more or less onerous, the observance of which is made a condition of the granting or continuance of the authority to exercise its powers within the province. These regulations usually include such requirements as the filing of returns giving more or less minute disclosure of the constitution and activities of the company, the maintenance of a resident attorney within the province, and the conditions upon which property may be held in the province. In this respect, therefore, the Acts are essentially allied to the class of legislation usually known as "company law," and in some of the provinces they are in fact incorporated with general company legislation.

(b) It was by a political accident that this feature of the Ontario Act escaped disallowance. See Blue Book on Provincial Legislation, 1901-1903, compiled by W. E. Hodgins.

That the Acts are not purely taxing measures is shown also by the fact that in some of the provinces at all events the granting of a license is a matter of discretion with the authorities. In Ontario, for instance, applicant companies, even those incorporated under Dominion legislation, are required to state which of their powers they desire to exercise within the province. The application is then considered by the Executive Council with a view to determining whether the exercise of these powers, and which of them, shall be permitted.

The companies of other provinces and foreign jurisdictions, including Great Britain, are, of course, included under the Acts, and the recognition of their corporate powers is made conditional upon their compliance with the provisions of the Acts. The companies of each province of Canada are thus subjected to the regulations of every other province to which they extend their operations; and the competition of the provinces in this class of legislation has reached its culmination in the Act of the 1911 session of the Manitoba Legislature to annul the licenses of companies incorporated in provinces where Manitoba companies are denied similar licenses or privileges to do business, and compelling companies of the other province applying for licenses in Manitoba to prove that in their province Manitoba companies are granted similar privileges (c). This Act is to be brought into force upon proclamation, which at the time of writing has not yet been issued (d). The Act appears to be directed at the province of British Columbia, which is the only province imposing restrictions more drastic than those of the province of Manitoba.

Disabling Effect of the Acts.

The most serious feature of the Acts, however, is the means adopted to insure compliance with their provisions. Though heavy penalties are prescribed it is significant that none of the provinces have been obliged to resort to an infliction of these penalties. If the Acts were confined to the imposition of a tax or license fee and the general regulation of corporate activity, and if their requirements were enforced by penalties administered under a reasonable procedure, the effect might not be unduly oppressive, whatever might be thought of the wisdom and constitutionality of the legislation. But to the pecuniary penalties there is in most of the Acts added a provision denying to companies not duly authorized under the Acts the capacity to appear in the courts

(c) 1 Geo. V. c. 10, s. 1.

(d) S. 3.

for the enforcement of corporate rights. A company which has not been alert to inform itself of the precise operation of the Acts may, therefore, find itself deprived of an essential element of its corporate capacity. Thus a British company or a company from another province which has for years been carrying on business in Ontario through occasional commercial travellers or by correspondence may by the mere fact of appointing some person resident in the province to act as its representative, deprive itself of the right of suing in the courts of Ontario upon its business contracts or claims:—in other words it becomes, so far as business relations in the province are concerned, an outlaw. In the province of British Columbia the position is rendered still more serious by the fact that business through non-resident travellers or by correspondence is not excepted, so that even an isolated business transaction by a foreign company which has no representative or branch in the province is fraught with the risk of legal incapacity on the part of the company to enforce its rights. And this disability can be overcome only by compliance with very onerous formalities and the establishment of a head office in the province and the appointment of a resident attorney with extensive powers.

Formalities of Authorization.

The formalities necessary to secure authorization under the various Acts vary with the provinces. In some provinces the authorization is by way of a "license;" in other provinces it is by way of "registration." In every province the administration of the Acts is in the hands of the same department of the government that administers the Companies Act, and the procedure is similar to that in issuing a charter.

Can License be Refused.

In the provinces of Alberta, Saskatchewan and in the Yukon Territory, the duties of the Registrar would appear to be merely administrative, and there would probably be no power to refuse a license if the formalities had been duly complied with. In Ontario, New Brunswick and Manitoba, however, the form of the Act would indicate that the granting of a license is a matter of discretion, even in the case of Dominion companies. In the provinces first mentioned, a demand for registration of a foreign company would probably be, as in the case of the registration of a local company, enforceable by mandamus (e).

(e) See *Julius v. Bishop of Oxford* (1880), 5 A. C. 235.

Effect of "Registration."

It is to be noted also that in Saskatchewan, Alberta and British Columbia, where foreign companies are required to register (f), the ordinary method of incorporating companies is not by letters patent issued in the name of the Crown, but by the registration of the memorandum of association and the issuing of a certificate by the Registrar. Foreign companies "registered" in these provinces are, therefore, in name as well as in effect re-incorporated for the purposes of the province.

The following section or its equivalent appears in the Acts of each of the three provinces (g): -

"Every extra provincial company registered as a company under this Act shall, subject to the provisions of its charter and regulations, and of this Act, have and may exercise all the rights, powers and privileges by this Act granted to and conferred upon companies incorporated thereunder, and every such extra-provincial company and the directors, officers and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out and perform every act, matter, obligation and duty by this Act prescribed and imposed upon companies incorporated thereunder, or upon the directors, officers and members thereof."

The registration of a foreign company thus produces the phenomenon of a corporation doubly incorporated, and serving, as it were, two masters, not alone as to its outward activities but also as to its internal constitution, including apparently its internal management and administration, its corporate powers, the form of its contracts, use of its seal and transfer of stock, liability of shareholders, place and time of meeting, qualification of directors, annual returns, winding up, etc., etc. It is to be remembered that this registration is not of a subsidiary company for local purposes, but of the parent company itself; and it is also to be observed that the duties and obligations imposed by the Acts are "subject to the provisions of its charter and regulations." It is difficult to calculate just what complications might arise under this peculiar provision.

Even in those provinces where companies are "licensed," the effect and intention of the Acts appear to be to require foreign companies to receive and hold their corporate capacities and rights in the province, not from their original instrument of incorporation, but from the provincial license.

(f) In British Columbia, only certain classes of companies are required to become "registered." Others may obtain a "license." See post p. 31.

(g) Saskatchewan, s. 12; Alberta, s. 12; British Columbia, s. 142.

ACTS OF ONTARIO, NEW BRUNSWICK, MANITOBA, SASKATCHEWAN, ALBERTA AND YUKON.

The Acts now in force in the provinces of Ontario, New Brunswick, Manitoba, Saskatchewan and Alberta, and in the Yukon Territory, are so similar in their terms and operations that to discuss them separately would involve a great amount of repetition. These Acts are, therefore, discussed as a group, and the Acts of the remainder of the provinces dealt with later.

The first of these Acts in point of time was that of Ontario, which was passed in 1900. In 1901 an Act modelled upon that of Ontario and largely copied from it was adopted by the Legislature of the North-West Territories and still remains in force with certain variations in the two provinces, Saskatchewan and Alberta, and the Yukon Territory, into which the North-West Territories were broken up in 1905. The province of New Brunswick adopted the same form of Act in 1903, and the province of Manitoba in 1909 (h). The Acts of these provinces are so nearly alike that a quotation of the chief provisions of one of them will give a general idea of them all. Such variations as are of importance will be noted hereafter. The following clauses are from the Ontario Act:—

1. In this Act the expression "Extra-Provincial Corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Ontario.

(Then follows an enumeration of certain classes of companies, some of which, such as banks and insurance companies, are excepted, and some included in the operation of the Act. Companies incorporated under Dominion legislation are specifically included).

6 No extra-provincial corporation coming within Classes VII., VIII. or IX. shall carry on within Ontario any of its business unless or until a license under this Act so to do has been granted to it, and unless such license is in force, and no company, firm, broker, agent or other person shall, as the representative or agent of or acting in any other capacity for any such extra-provincial corporation, carry on any of its business in Ontario unless or until such corporation has received such license and unless such license is in force.

(h) The Act of Ontario is 62 Vict. c. 24, with amendments in 1901, 1903, and 1908; in New Brunswick, Con. Stat. 1903, c. 19, amended in 1905 and 1906; in Manitoba, 9 Edw. VII. c. 10; in Saskatchewan, Rev. Stat. Sask. c. 73, amended 1911; in Alberta, 3 Edw. VII. c. 14, amended 1903 (Second Session), 1907, 1908, and 1909; in Yukon Territory, Cons. Ordinances, 1902, c. 59.

Provided that taking orders for, or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative, or (i) no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of this Act.

Provided, also, that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Ontario, or that it was at the date of the commencement of this Act carrying on business in Ontario, shall in any prosecution for an offence against this section rest upon the accused.

14. If any extra-provincial corporation coming within Classes VII., VIII. or IX. shall, contrary to the provisions of section 6 hereof, carry on in Ontario any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit or proceeding in any court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of section 6.

Provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit or other proceeding may be maintained, as if such license had been granted or restored or such suspension had been removed before the institution thereof.

15. If any company, firm, broker, agent or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an extra-provincial corporation, carry on any part of its business in Ontario, such firm, broker, agent or other person shall incur a penalty of twenty dollars for every day upon which it, he or they carry on such business.

Business Included under the Acts.

In each of these provinces the operation of the Act is limited by the definition of "carrying on business." Each Act contains the clause or its equivalent: "Provided that taking orders for or

(i) Each of the other Acts has "and" instead of "or" at this point. The meaning appears to be the same.

buying or selling goods, wares or merchandise by travellers or by correspondence, if the corporation has no resident agent or representative, or no office or place of business in . . . shall not be deemed a carrying on of business within the meaning of this Act." The operation of these Acts is, therefore, limited to companies which maintain an office or place of business, or a resident representative in the province. It would seem, however, that the mere fact of a traveller for a company residing in a province would bring the company within the operation of the Act with respect to any business done by the company in the province (j). The wording of the proviso clearly indicates that the "taking of orders," etc., is permissible only so long as the company has neither a resident agent or representative nor an office or place of business.

In the Acts of Saskatchewan and Alberta there is a slight variation of language that might be of importance in some cases, the proviso being that "the taking of orders by travellers for goods, wares or merchandise to be subsequently imported into the Territories to fill such orders, or the buying or selling of such goods, wares or merchandise by correspondence, if the company has no resident agent or representative and no warehouse, office or place of business in the (province) . . . shall not be deemed," etc.

What Companies Included under the Acts.

In each of the provinces mentioned, that is to say, Ontario, New Brunswick, Manitoba, Alberta, Saskatchewan and in the Yukon Territory, the Act covers companies incorporated by the Dominion as well as those incorporated by one of the other provinces or by a foreign jurisdiction. Certain classes of companies such as insurance companies, loan and investment companies, banks, etc., are generally excluded from the operation of the Acts, these companies being, as a rule, subject to a direct tax under other statutes. The companies primarily aimed at, and included under, the extra-provincial licensing Acts are ordinary commercial companies engaged in manufacturing or trading, though some of the Acts include other corporations as well.

Disabilities.

The most serious feature of all these Acts is the clause which renders unlicensed companies incapable of maintaining any action

(j) Note the different effect of the Quebec Act, post p. 41.

in the courts of the province in connection with their business transactions (k). This is the provision which is most effective in forcing companies to comply with the Act; since few companies care to risk finding themselves in the position of impotence in the matter of enforcing their contracts or collecting their money claims, a position which a slow or unwilling debtor is almost sure to take advantage of, and if not he, his lawyer.

The operation of this provision is not like that of the Statute of Frauds or the Statute of Limitations, which merely bar the remedy. An unlicensed company is wholly deprived of its standing in the court and its capacity to maintain the action denied. If it should undertake to issue a writ the writ will be set aside (l).

License Retroactive.

In Ontario, New Brunswick, and Manitoba, the license, when taken out, is retroactive and validates past transactions which were invalid for want of a license. The following clause or its equivalent is contained in each of the three Acts (m).

"Provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit or other proceeding may be maintained as if such license had been granted or restored or such suspension had been removed before the institution thereof."

In Saskatchewan and Alberta and the Yukon Territory this proviso is omitted. The clauses of the Saskatchewan and Alberta Acts read as follows (n).

"Any foreign company required by this Ordinance to become registered shall not, while unregistered, be capable of maintaining any action or other proceeding in any court in respect of any contract made in whole or in part in the Territories in the course of or in connection with business carried on without registration contrary to the provisions of section 3 hereof."

The clause of the Yukon Ordinance is as follows (o):—

"No such company shall, while unlicensed, be capable of maintaining any action or other proceeding in any court

(k) Ontario, s. 14; New Brunswick, s. 18; Manitoba, s. 17; Saskatchewan, s. 10; Alberta, s. 10; Yukon, s. 8.

(l) *Empire Cream Separator Co. v. Maritime Dairy Co.* (1907), 38 N. B. R. 309, note post p. 27.

(m) Ontario, s. 14; New Brunswick, s. 18; Manitoba, s. 17.

(n) Saskatchewan, s. 10; Alberta, s. 10.

(o) S. 8.

in respect of any contract made in whole or in part in the Territory in the course of or in connection with business carried on without a license, contrary to the provisions of section 6 hereof."

The wording of these clauses of the Acts of Saskatchewan, Alberta and Yukon leaves it at least open to doubt whether on becoming registered or licensed the disability is removed as to maintaining actions on contracts entered into previous to the registration or license. In the absence of any decisions in the courts any expression of opinion upon this point would, of course, be mere speculation.

Penalties.

The penalty imposed by the Acts of Ontario, New Brunswick and Manitoba, for carrying on business in the province without complying with their requirements, is a fine of £50 per day upon the company and \$20 per day upon its agents for every day upon which business is carried on. Suit can be brought only with the consent of the Attorney-General, so that the enforcement of the penalties depends upon the disposition of the provincial officials. Actions for penalties must, under these Acts, be brought within six months after they have been incurred.

In Saskatchewan, Alberta and Yukon, there is likewise a penalty of \$50 per day upon the company, but the penalty upon the agent of the company is also \$50 per day. Besides this there are in Saskatchewan and Alberta penalties of \$20 per day upon companies and their agents for default in making the annual returns required by the Act. In the Yukon Territory these penalties are \$50 per day; and there is an additional penalty of \$20 for each offence of omitting to have upon the stationery of the company the amount of the paid up capital of the company immediately under or after the name of the company (p).

The penalties under the Acts of Saskatchewan, Alberta and Yukon are recoverable upon summary conviction before a magistrate, and the consent of the Attorney-General is not necessary. Neither is there in these provinces any limitation of the time within which proceedings for the penalties must be entered.

Remission of Penalties.

It is conceivable that on an application of a company which had been carrying on business in violation of the Act, for a

(p) S. 3.

license intended for the purpose of securing a footing in the courts, the provincial authorities might exact the penalties which had accumulated against the company, or a part of them.

The Acts of Ontario, New Brunswick, and Manitoba contain provisions enabling the government to remit the whole or part of the penalties incurred before the issuing of such a belated license (q), so that the question whether cumulative penalties are to be collected depends in these provinces upon the disposition of the provincial government. It is doubtful, indeed, whether the provision as to remission of penalties was necessary, since in each of these provinces the penalties can only be collected at the instance, or with the consent of, the Attorney-General. It may not be out of place to venture the conjecture that only in a very flagrant case would any attempt be made to collect such cumulative penalties.

Holding Land.

Under a number of old English statutes perpetuated in the laws of each of the provinces under consideration, a corporation is not allowed to hold real property without a license from the Crown so to do, called a "license in mortmain." Any lands acquired by a company not having such a license are subject to be forfeited to the Crown; though it would appear that the possibility of such a forfeiture is the only risk attendant upon the holding of lands without a license in mortmain (r); and a registrar of deeds is apparently not justified in refusing to register a conveyance to an unlicensed company (s). The licenses issued under the Acts of Ontario, New Brunswick and Manitoba include the power to acquire and hold real estate to the extent permitted by the local Companies Acts to companies locally incorporated (t). The corresponding power is acquired by registration under the Acts of Saskatchewan (u) and Alberta (v), and apparently also in the Yukon Territory (w).

Onus of Proof.

Each of the Acts mentioned provides that in the case of prosecution the onus of proving that the company has no resident agent and no office or place of business in the province shall lie

(q) Ontario, s. 16; New Brunswick, s. 20; Manitoba, s. 19.

(r) *McDiarmid v. Hughes* (1888), 16 O. R. 570.

(s) *Ex parte New Vancouver Coal Mining and Land Co.* (1890), 9 B. C. R. 571.

(t) Ontario, s. 10; New Brunswick, s. 16; Manitoba, s. 10.

(u) S. 11.

(v) S. 11.

(w) *Clazy v. Thornburn* (1905), 2 W. L. R. 534, post p. 26.

upon the company (x). So that where an unlicensed company is found to have any business connections whatever within the province it is *prima facie* guilty of an infringement of the Act, and can only escape the penalty by proving that it has no resident agent or office or place of business in the province. It is to be noted that it is only in the case of *prosecution* that the onus is thus placed upon the company (a). Where the company's capacity to appear in the courts is challenged in an ordinary action it is apprehended that this provision would not apply, and it would be incumbent upon the party alleging the incompetence of the company to prove affirmatively that it had an office or place of business or a resident agent.

Fees.

The fees payable for license or registration in the provinces thus far dealt with, vary greatly both in amount and in the basis on which they are calculated.

In Ontario the fees are computed upon the amount of capital employed by the company in the province, and the scale is that employed for the incorporation of companies, the fee being payable only once and not annually. There are also small fees payable with the annual returns (b).

In New Brunswick the fee is either \$50 or \$100, according as the capital stock (c) is within or exceeds the sum of \$100,000 (d). But as the license remains in force for only one year these fees are payable annually. Provision is made, however, with respect to companies carrying an established business outside of New Brunswick that the fees may be reduced by Order-in-Council to such sum as may be thought just, having regard to the nature and importance of the business of the company in New Brunswick and the amount of capital employed in the province.

In Manitoba the fee is based upon the capital stock of the company, according to a schedule prescribed by Order-in-Council, and though there is a provision similar to that of New Brunswick Act for reducing the fees of companies carrying on an established business outside the province, the provincial authorities have not

(x) Ontario, s. 6; New Brunswick, s. 12; Manitoba, s. 6; Saskatchewan, s. 3; Alberta, s. 3; Yukon, s. 7.

(a) The Yukon Act must be excepted from this statement. An additional clause of the Yukon Act provides that *in any action or proceeding* the burden of showing that it is licensed shall be upon the company—s. 8 (2).

(b) See schedule of fees, p. 50.

(c) This is interpreted by the departmental officials as meaning nominal capital.

(d) S. 22; schedule "A."

yet put the provision into practice. The fees under the Manitoba Act are payable only once, and there are also small fees payable on making the annual returns required by the Act (e).

The fees under the Saskatchewan Act are computed upon the nominal capital of the company according to schedule appended to the Act. There is an initial fee of from \$40 upwards and an additional annual fee of from \$10 upwards (f).

The fees under the Alberta Act are fixed by a schedule to the Act, and are based on the "capitalization" (g) of the company. These fees are payable only once, and there is a fee of \$5 payable with the annual returns (h).

The fees under the Yukon Ordinance are fixed by a schedule to the Ordinance and are based on the amount of the "capital stock" of the company (i).

Requirements for License or Registration.

In Ontario, New Brunswick, Manitoba and Yukon extra-provincial companies are required to take out a "license." In New Brunswick this license is in force for only one year, and is renewable annually. In Ontario, Manitoba and Yukon it is perpetual. In Saskatchewan and Alberta foreign companies are required to become "registered."

The procedure for taking out a license varies with the provinces. In Saskatchewan, Alberta and Yukon the procedure is laid down by the Act itself; in Ontario and New Brunswick it is prescribed by Order-in-Council under the authority of the Act. Though some of the provinces issue forms on which the application may be made, there is usually so much difficulty in complying with the various details that the services of a solicitor are necessary.

The details of the requirements in the different provinces are too lengthy and complicated to be set out here, but in most of the provinces it is necessary to file with the proper official a petition or application accompanied by a copy of the company's charter or other instrument of incorporation. In Saskatchewan and Alberta there must be filed along with the charter of the company a copy of the Act or statute under which the charter was granted. The Manitoba Act calls for the filing of the last auditor's

(e) See schedule p. 60.

(f) See schedule p. 61.

(g) This probably means the nominal capital though there appears to be no ruling upon the point.

(h) See schedule p. 62.

(i) See schedule p. 63.

report (j). In each of the provinces the application must be accompanied by more or less detailed information as to the capital and assets of the company, its officers, etc., and in Saskatchewan and Alberta it is necessary to file copies of all by laws, rules and regulations of the company (k).

Power of Attorney—Head Office.

In each of these provinces it is also necessary along with the application, to file a power of attorney appointing some person domiciled in the province with full authority to represent and bind the company in any legal proceedings which may arise in the province. This person need not be a lawyer, though it is generally convenient to have a lawyer appointed owing to the nature of the powers conferred. The power of attorney can, of course, at any time be revoked and someone else appointed. Most of the Acts require, and all of them contemplate, the establishment of a head office for the company within the province. Nominal compliance with this requirement may be secured by naming the office of the attorney as the head office of the company. Where a company maintains a branch office in the province there is, of course, no difficulty either as to the head office or the attorney. In the case of Dominion companies, the attorney must, except under the Manitoba Act, be appointed even though the head office of the company is within the province.

Annual Returns.

In Ontario, Manitoba, Saskatchewan, Alberta and the Yukon Territory extra-provincial companies are required to make annual returns similar to those made by companies locally incorporated. The requirements as to these returns vary considerably in the different provinces as to the contents and the time for filing. The provinces issue blank forms for the returns which may be had on application. A small fee is in each case payable with the annual return (l).

Municipal License Fees.

In all of the provinces companies are, of course, subject to local municipal taxes. A full discussion of these taxes is beyond the scope of these pages, but attention should be drawn to a clause which appears in the Foreign Companies Acts of Saskatchewan

(j) S. 8.

(k) Saskatchewan, ss. 5 (a) and 2 (4); Alberta, ss. 5 (a) and 2 (4).

(l) The fees are given along with the license fees on p. 59 et seq.

and Alberta as follows: "No license fee shall be imposed by any municipal council upon any company registered under this (Act)" (m). It has been recently held (n) that while a municipality is prevented by this provision from imposing a license fee it may impose a "business tax" upon a company notwithstanding that the company has been registered under the Act. There are also in some municipalities in the western provinces by-laws requiring "retail travellers," that is travellers selling direct to consumers, to take out a license. Whether these by-laws are valid in view of the section of the Foreign Companies Act has not yet been decided in any reported case.

DECISIONS ON THE ACTS OF ONTARIO, NEW BRUNSWICK, MANITOBA, SASKATCHEWAN, ALBERTA AND YUKON.

The Acts of the different provinces thus far considered, that is to say, Ontario, New Brunswick, Manitoba, Saskatchewan, Alberta and Yukon, have come before the courts in a variety of cases. Abstracts from a number of these cases are given below to illustrate the operation of the Acts. The decisions of the courts in one province will, of course, largely influence the courts of the other provinces having similar Acts. These cases will also be found applicable to the British Columbia Act, with due regard to the wider scope of its definition of "carrying on business." The decisions under the former British Columbia Act will also be found instructive in this connection if due regard is given to the differences in the terms of the Acts.

What Constitutes Resident Agent.

In *Bessemer Gas Engine Company v. Mills* (1904), 8 O. L. R. 647, the plaintiffs, a foreign corporation not licensed to do business in Ontario, authorized F., a resident of the province, to sell their engines at certain specified prices, upon commission. F. never went out to solicit orders, but took only those that came to him at his place of business. He sold an engine for the plaintiffs to the defendant, and an action was brought to recover the price. It was held by the Divisional Court on appeal from the

(m) Saskatchewan, s. 13; Alberta, s. 13.

(n) *Dominion Express Co. v. Brandon* (1910), 15 W. L. R. 26.

County Court that F. was a resident agent or representative within the meaning of the Ontario Act, and that the plaintiffs were incapable of maintaining the action. The action was, therefore, dismissed, but without prejudice to the plaintiffs' right to bring another action upon taking out their license.

In *Semi-Ready v. Hawthorne* (1909) 2 A. b. Rep. 201, the plaintiffs, a Dominion company unregistered in the Province of Saskatchewan, had entered into the ordinary form of contract with a retail merchant of Medicine Hat, giving him the exclusive right for that town of selling the plaintiffs' goods. The plaintiffs were to advertise the goods and the defendant was to have the right to use the plaintiffs' trade-mark. The advertisements of the plaintiffs designated the defendant as their "exclusive agent." The action was brought to recover the price of goods delivered to the defendant on an order given to a non-resident representative of the plaintiffs. It was held by Harvey, J., that although the defendant was not strictly an agent of the plaintiffs for the sale of their goods, he was "representative" of the plaintiffs within the meaning of the Foreign Companies Ordinance, and was carrying on part of their business within the meaning of and contrary to the provisions of the Ordinance, and the plaintiffs were therefore not entitled to bring the action. (c)

Winding-up Proceedings—Onus of Proof.

In *re Nelson Ford Lumber Company, Limited* (1908), 1 Sask. 108, the Winnipeg Paint & Glass Co., a company incorporated in Manitoba, made application in the Province of Saskatchewan under the Dominion Winding-up Act for the winding-up of the Nelson Ford Lumber Company, Limited. It was held by Lamont, J., that such an application was a "proceeding" within the meaning of the Foreign Companies Ordinance, and that the applicant being unlicensed under the Foreign Companies Ordinance, was not entitled to bring such a proceeding in the courts of Saskatchewan, the application being in respect of a contract made in the Province in connection with business carried on by the petitioner. There was evidence that the orders for goods under which the applicant's claim arose had been taken by a traveller of the Winnipeg company, and there was no evidence that the Winnipeg company did not have a resident agent, representative or a warehouse, office or place of business in Saskatchewan. In the absence of such evidence, it was held that the Winnipeg company did not come within the excepting clause of the Act.

(c) Cf. *Halifax v. McLaughlin*, post p. 47.

Assignee of Note Payable to Unlicensed Company.

In *Ireland v. Andrews* (1904), 6 Terr. L. R. 66, decided by Newlands, J., of the Supreme Court of the North-West Territories, the plaintiff was the indorsee of a promissory note made in favour of The Sawyer & Massey Company, Limited, for certain machinery. The company was incorporated under a charter from the Dominion Government, but had not become registered under the Foreign Companies Ordinance of the North-West Territories. It was held that the plaintiff was not entitled to recover on the note as it had been taken in connection with a transaction forbidden by the Ordinance, and as the plaintiff had knowledge of the facts which brought the transaction within the operation of the Ordinance.

The case of *Ireland v. Andrews* was very thoroughly discussed before a Divisional Court of Ontario, in *Bank of Commerce v. Rogers* (1910), 23 O. L. R. 109, where it was held not only that the indorsee of a note to an unlicensed company was not entitled to sue thereon, but also that it was immaterial whether or not the indorsee had notice of the facts which brought the company within the disabling operation of the Act.

Dominion Company Subject to Penalty.

In *Rex v. Massey-Harris Company* (1905), 9 Can. Cr. Cas. 25, 6 Terr. L. R. 126, it was held by the Supreme Court of the North-West Territories that the defendant company, a company incorporated under the Companies Act of Canada, was subject to summary conviction under the Foreign Companies Ordinance for carrying on business without registering and paying the license fees under the Ordinance. (p)

Mortgage Made by Foreign Company.

In *Clazy v. Thornburn* (1905), 2 W. L. R. 534, the plaintiff sued for possession under a mortgage made by the Klondike Gold Placer Mines Company, a company incorporated in the State of Wyoming, and operating under a license from the Secretary of State for Canada. The company had not obtained a license under the Foreign Companies Ordinance in force in the Territories, and it was held that the plaintiff could not succeed in his action, having derived its title from an unlicensed company.

(p) But see p. 53.

Action of Account Against Manager.

In *McDonald v. Klondike Government Concession Limit* (1906), 4 W. L. R. 151, Macaulay, J., trial Judge, Yukon Territory, distinguished *Clazy v. Thornburn*, 2 W. L. R. 531, holding in an action of account between the company and its manager that the company was not precluded from maintaining an action by reason of its not having taken out a license under the Foreign Companies Ordinance, the question between the parties not having arisen directly out of business conducted contrary to the requirements of the Ordinance. (q)

Action on Promissory Note.

In *The Empire Cream Separator Company v. Maritime Dairy Company* (1907), 38 N. B. R. 309, the facts were as follows:—A traveller for the plaintiffs, an Ontario company, met a representative of the defendants, a New Brunswick company, at Bloomfield, in the State of New Jersey, and there took an order from him for two carloads of cream separators to be delivered f.o.b. at Sussex, N.B., and St. John, N.B., respectively, and to be paid for by promissory notes to be given on delivery of the goods, it being agreed that the defendant company should have the exclusive right of sale in certain named counties, and should not sell or handle any other separators in the said counties. The order was taken on condition that it should be accepted by the head office at Toronto, and on being forwarded to Toronto was so accepted in writing. The defendant company advertised itself in New Brunswick as the sole agent of the separators with the consent and at the expense of the plaintiff company. The goods were delivered and promissory notes signed therefor in New Brunswick. In an action on the notes it was held by the Supreme Court of New Brunswick that the sale was a contract "made in part" within the province of New Brunswick within the meaning of the Act, the performance of the contract not being completed until the delivery of the goods and the notes given. It would appear from the judgment in this case that either the delivery of the goods in the province, or taking of notes, would constitute "carrying on business" within the meaning of the Act.

Claim for Goods Supplied.

In *International Text Book Co. v. Brown* (1907), 13 O. L. R. 644; 9 O. W. R. 369, it was held by the Divisional Court of Ontario that the plaintiffs, a company incorporated in the State

(q) But see *I. Separator Co. v. Walworth*, post p. 37.

of Pennsylvania, were precluded, by their omission to take out a license under the Act, from maintaining an action for the recovery of moneys claimed to be due from one of their students in Ontario for books supplied him in the course of their business as a correspondence school.

Sale of Stock.

In *Canadian Co-operative Co. v. Trauticzek* (1908), 1 Sask. 143, the plaintiffs, a Manitoba company, sued in the Supreme Court of Saskatchewan on a note given in payment of shares of stock in the plaintiff company, sold to the defendant in Saskatchewan. The defence was that the plaintiff company was unlicensed under the Foreign Companies Ordinance of Saskatchewan and therefore incapable of maintaining the action. It was held by Pendergast, J., that the sale of its capital stock by a foreign company was not a transaction in the course of or in connection with its business and that therefore the action could be maintained.

Sale of Stock—Indorsee of Note Payable to Unlicensed Company.

In *Bank of Commerce v. Rogers* (1910), 23 O. L. R. 109, the plaintiffs sued upon a promissory note made by the defendant in favor of the International Snow Plow Manufacturing Company, a foreign company incorporated in Oklahoma, U.S.A. The notes were given in payment of shares of the capital stock of the company, and were endorsed by the officers of the company to the plaintiffs. One of the defences set up was that the company not having obtained a license under the Extra-Provincial Corporations Licensing Act, any business carried on by them in the Province of Ontario was illegal, and that the plaintiffs claiming under the company were affected by the illegality and could not recover against the defendant. Subsequent to the making of the notes, but before action, the company had obtained a license, and it was held on this ground that the plaintiffs were entitled to recover, the license having a retroactive effect in removing the illegality.

It was held by Boyd, C., that "the giving of the note and the negotiation of it with the bank were both matters done in and for the carrying on of the business of the company," which were prohibited by the Act; and that therefore the statutory presumption that the bank was a holder in due course was displaced and that the bank could not recover unless it could prove (which

it had not done) that it had not only given value for the note but had also acquired it in good faith and without notice of the illegality.

The opinion expressed by the Chancellor that both the giving of the note and the negotiation of it with the bank were in violation of the Act is in direct conflict with the Saskatchewan case of *Canadian Co-operative Co. v. Trautnick*, noted above. It does not appear from the report of the Ontario case that the Saskatchewan case was referred to, but the writer is informed by counsel engaged on the case that on a re-argument, which was asked for by the Court, the Saskatchewan case was referred to but not approved. As authority stands in the Province of Ontario, therefore, no distinction is drawn between the carrying on of the company's chartered business and the selling of shares of the company's stock.

Business Through Non-resident Traveller

In *Heney v. Birmingham* (1909), 36 N. B. R. 337, the plaintiffs, the Heney Carriage and Harness Company, Limited, a company incorporated under the Dominion Companies Act, and having its head office at Montreal, were suing in New Brunswick on a guarantee given to them by the defendants in consideration of the plaintiffs supplying the W. Company, of Woodstock, N.B., with a carload of carriages. The sale was made by the plaintiffs' traveller, but the plaintiffs had no office or place of business in New Brunswick. The defendant claimed that the sale and guarantee were illegal as coming under the provisions of the Act respecting the Imposition of Certain Taxes on Certain Incorporated Companies and Associations, C. S. N. B. (1903), c. 18 (i.e., the Extra-Provincial Licensing Act). The plaintiffs contended (a) that the Act was *ultra vires* of the local legislature in so far as it referred to companies incorporated by the Dominion Parliament, and (b) that in any case it did not apply to the plaintiff company inasmuch as they came within the provision excepting companies carrying on business only through travellers or correspondence. A verdict was given for the plaintiffs, and on appeal to the full court the verdict was sustained, the courts holding that the plaintiffs were within the excepting proviso.

Unlicensed Company Taking Mortgage.

In *Euclid Avenue Trust Co. v. Hobs* (1910), 2 O. W. N. 825, a Divisional Court of Ontario held that the plaintiffs, who were unlicensed under the Extra-Provincial Licensing Act, 63 Vict

c. 24, at the time the action was brought, were not precluded from recovering as mortgagees in an action for possession of land situated in Toronto, on a mortgage made to them by the defendant, the taking of such mortgage being held not to constitute a carrying on of business within the meaning of the statute.

THE BRITISH COLUMBIA ACT.

History of the Act.

The chief provisions relating to extra-provincial corporations in the present British Columbia Act were copied practically verbatim from the Ontario Act, but with one variation, hereafter to be noted, which vitally affects the whole scope of the Act and distinguishes it from the Acts of all other provinces. The provisions requiring extra-provincial corporations to take out licenses and penalizing unlicensed companies date from 1897, but very little attention was paid to them until certain decisions in the courts called the attention of the commercial world to the operation of the Act (a). The Act did not then contain the provision denying the capacity of unlicensed companies to engage in legal proceedings, but in *Lilly v. Johnston* the question was raised whether an unlicensed company could sue in the courts of the province. It was held by the Court of Appeal, reversing the decision of the Supreme Court of the province, that in the absence of an express provision in the Act it should not be presumed that it was the intention of the Act to interfere with the doctrine of international comity by which foreigners, including foreign corporations, are allowed free access to the courts, and that the taking of legal proceedings in the courts was not carrying on business within the meaning of the Act. An appeal was to have been taken to the Supreme Court of Canada, but for some reason this was dropped. Owing to the doubts raised by the case, however, there was an agitation for an amendment of the Act, and in the session of 1910 the provisions relating to extra-provincial corporations were re-cast by the introduction of provisions from the Ontario Act.

(a) *Northern Construction Co. v. Young* (1908), 13 B. C. R. 297; *Lilly v. Johnston* (1908), 14 B. C. R. 174; *Waterous Engine Works Co. v. Okanagan Lumber Co.* (1908), 14 B. C. R. 238.

General Provisions of the Act.

The provisions relating to extra-provincial companies carrying on business in British Columbia are contained in the general Companies Act of the province (b). Under section 139 of the Act as it now stands, every extra-provincial company having gain for its object and carrying on any of its business within the province is required to be licensed or registered. "Extra-provincial company" is defined to mean "any duly incorporated company other than a company incorporated under the laws of the province of British Columbia."

Under section 153 companies incorporated under the laws of Great Britain and Ireland or of the Dominion of Canada, or of the former Province of Canada, or of any of the provinces of the Dominion, may obtain a *licence* to do business. The Act does not distinguish between provincial and Dominion companies, but groups both along with companies incorporated in Great Britain or Ireland, all being prohibited from carrying on any part of their business without a license. All other extra-provincial companies are required to become *registered*.

Registration and incorporation are synonymous under the British Columbia Act, which follows very closely the English Act, companies being incorporated by the filing of a memorandum and articles of association in the registry office. Extra-provincial companies registered in the province are subject to the same rules as companies locally incorporated and must make the same annual returns, etc., (c). Apparently they are also subject to such provisions of the Act as, for instance, those respecting winding-up. (d)

Companies Included Under the British Columbia Act.

The British Columbia Act differs from those of the other provinces, also in that with one specific exception, The Hudson's Bay Company (j), it applies to "every extra-provincial company having gain for its purpose and object." There is nothing in the Act to exclude railway companies, express companies or banking corporations, and if the Act is not *ultra vires* of the province, it is difficult to escape the conclusion that such companies are incapable of carrying on business or maintaining proceedings in

(b) B. C. Stat. 1910, c. 7, Part VI. ss. 139-170, amended 1911, c. 12.

(c) S. 142.

(d) See ante p. 14. and post p. 34.

(j) S. 11.

the courts in the province without being licensed or registered. The only expression even remotely tending to show that such was not the intention of the Act is the words "within the scope of this Act," in section 139, but this expression does not appear to add anything to the meaning of the section or to the Act itself.

Business Included Under the British Columbia Act

If the Act had been confined in its scope by a clause corresponding to that of the Ontario Act, which excludes business through commercial travellers or correspondence, the effect would have been no more onerous than the Acts in the other provinces. As a matter of fact, a clause identical with that of the Ontario Act, which excepts business through non-resident agents or correspondence, appeared in the British Columbia Act until its second reading in the Legislature, when it was struck out in order that such business might not be excepted. Whether the courts would take notice of this fact or be influenced by it or not, the executive officers of the government are interpreting the Act as covering business through travelling salesmen, and inspectors have been appointed to enforce the Act as against commercial travellers of unlicensed companies. The course of legal decisions under the older licensing Act, also gives reason to believe that the courts of the province would give a wide construction to the phrase "carrying on business," and would support the executive interpretation of the Act (e).

There are reported cases where the expression "carrying on business" has received a narrower construction than that above indicated (f); but the very comprehensive language of the British Columbia statute may preclude such an interpretation of its provisions. Section 139 forbids the carrying on of "any of the business of an extra-provincial company" without a license; and section 166 imposes penalties and disabilities upon any unlicensed company carrying on "any part of its business." In the absence of judicial decisions it is impossible to say what is the precise effect of this language. A comparison of the language in the British Columbia Act with the language of the Acts considered

(e) See *Northern Construction Co. v. Young* (1908), 13 B. C. R. 297; *Lilly v. Johnston* (1908), 14 B. C. R. 174; and *Waterous Engine Works Co. v. Okanagan Lumber Co.* (1908), 14 B. C. R. 238.

(f) See *Halifax v. McLaughlin* (1907), 39 S. C. R. 174, noted post p. 47; *London v. Watt* (1893), 22 S. C. R. 300; *Granger v. Gough* (1896), A. C. 325; *Halifax Hotel Co. v. Canadian Fire Engine Co.* (1906), 41 N. S. L. R. 97, post p. 47.

in the cases above mentioned, leaves considerable room for distinguishing their legal effect. The whole form of the British Columbia Act appears to point to a construction which would prohibit literally *any* of the company's business from being carried on in the province without a license or registration. If this view is correct the Act would cover not only the conducting of a branch for the manufacture or sale of goods or the general conduct of a company's operations within the province, but also the soliciting of business by commercial travellers or other agents, the advertising of goods through newspapers, distribution of circulars or otherwise, the delivery of goods in the province and possibly also correspondence in respect of goods intended to be sold to customers in the province. It is a question, for instance, whether an Ontario company carrying on a mail-order business in British Columbia under which goods are shipped to British Columbia on receipt of cash with orders, should not be regarded as carrying on business in British Columbia within the meaning of the Act, though it might doubtless be argued that transactions of the nature indicated should be regarded as taking place at the place to which the orders are sent and from which the goods are sent (g).

Even under the former Act, the supplying of goods by a foreign company to a customer within the province, appears to have constituted "carrying on business." (n) It is significant of the general opinion as to the operation of the Act, that many Eastern companies carrying on a mail order business in British Columbia have taken out their licenses under the Act.

The penal clauses of the British Columbia Act would, of course, have no force outside the province, and a company doing a mail-order business could not very well be prosecuted unless it were brought by some means within the jurisdiction of the British Columbia courts. But if any occasion should arise for taking action in the British Columbia court in connection with business carried on as above, the company might find itself denied the capacity to appear in court.

There is some doubt as to whether the Act would include a sale of shares of the company's stock (o); and an action of account

(g) *Empire Cream Separator Co. v. Maritime Dairy Co., and Watrous Engine Works Co. v. Okanagan Lumber Co.*, noted on pages 27 and 38.

(n) See *Northwestern Construction Company v. Young*, noted post p. 38.

(o) See *Canadian Co-operative Co. v. Trappiezok* (1908), 1 Sask. 143, noted ante p. 28, and *Bank of Commerce v. Rogers* (1910), 23 O. L. R. 109, noted ante p. 28.

or similar proceedings between a company and its servants would apparently not come within the operation of the Act (p).

Obligations of Registered Companies.

The obligations of registered companies are much more onerous than those of companies which are merely licensed. Foreign companies registered under the Act are, subject to the provisions of their charter and by-laws, under the same obligations as companies locally incorporated (q). Amongst the duties of such companies are those of maintaining a registered office to which all communications and notices may be addressed (r), and of having its name painted or affixed to the outside of every office or place in which its business is carried on in a conspicuous position in letters easily legible (s). The penalty for non-compliance with these provisions is a fine of twenty-five dollars per day. Registered companies are also required to empower their attorney within the province to issue and transfer shares of the company and to keep a stock register within the province (t). The provisions respecting the issuing and transfer of shares and keeping a stock register do not apply to any company which shows to the satisfaction of the registrar either that the company is not a "public" company, the shares or stock of which is on the market, or that although a public company its shares are not on the market in the Province (u).

Disability Under British Columbia Act.

In the revision the disability clause of the Ontario Act was also introduced, and the Act now provides that an unlicensed company "shall not be capable of maintaining any action, suit or other proceeding in any court in British Columbia, in respect of any contract made in whole or in part within this province, in the course of, or in connection with its business, contrary to the requirement of this part."

(p) See *McDonald v. Klondike Government Concession Limit.* (1906) 4 W. L. R. 151, noted ante p. 27, and *DeLaval Separator Co. v. Walworth* (1907), 13 B. C. R. 74, noted post p. 37.

(q) S. 142, see, also, p. 14.

(r) S. 70.

(s) S. 71.

(t) S. 143.

(u) S. 161.

Penalties Under British Columbia Act.

The Act contains clauses similar to those of the Ontario Act, imposing a penalty of \$50 per day upon companies and \$20 per day upon "any company, firm, broker or other person acting as the agent or representative of or in any other capacity" for the business," contrary to the Act. (v) The consent of the Attorney-General is necessary in any action for a penalty. (a)

License Retroactive.

Registration or a license under the British Columbia Act is retroactive, as under the Ontario Act. (w). While this is in one sense an advantage, it makes the Act in another sense operate more oppressively. Any company which finds itself in a position of incapacity with respect to legal proceedings has the option of taking out a license before proceeding with an action or of commencing the action without a license and litigating the constitutionality of the Act. There is no question as to which alternative would, under ordinary circumstances, be chosen by a business man. Thus the question of the validity of the Act is very difficult to bring before the courts.

Remission of Penalties.

The Act also contains the provision of the Ontario Act, allowing the Lieutenant-General to remit penalties that have been incurred before the issuance of a license or certificate of registration (x).

Holding Land.

A company licensed or registered under the Act acquires *ipso facto* the power to deal in and hold lands in the province as freely as a private individual, subject, of course, to the charter and by-laws of the company (y).

Fees Under the British Columbia Act.

The fees payable upon the registration or licensing of extra-provincial companies are based upon the same schedule as those

- (v) Zs. 166, 168.
- (a) Zs. 170.
- (w) Zs. 166.
- (x) Zs. 169.
- (y) Zs. 141.

for the registration (i.e., incorporation) of local companies, with the exception that for any company proving that it has an established business outside the province in which at least half its capital is employed, the maximum fee is \$250 (2).

Procedure for Obtaining License in British Columbia.

The conditions for obtaining a license or registration in British Columbia are more onerous than in any other province. A company applying for either a license or registration is required to file with the Registrar of Companies a copy of its "charter and regulations." "Charter" is defined by the Act to mean "the Act, statute, ordinance or other provision of law, by or under which the company is incorporated, and any amendments thereto applying to such company, whether of this or of any other province, or of the Dominion of Canada, or of the United Kingdom, or of any colony or dependency thereof, or of any foreign state or country, the memorandum of association or agreement or deed of settlement of the company, and the letters patent or character of incorporation, and the license or registration in registration of the company, as the case may be;

"Charter and regulations" is defined to mean: "The charter of the company and the articles of association, and all by-laws, rules and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company."

A literal compliance with the last clause is, of course, practically impossible. What is probably meant is instruments in the nature of bonds, debentures or mortgages on the undertaking of the company.

In addition to the material above mentioned the company must file an affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter; a power of attorney to someone resident in the province to represent it for legal purposes; a notice of the place where the head office of the company without the province is situated, and a notice of the place where it is proposed to establish the head office for British Columbia.

Under the Act as passed in 1910 it was necessary to publish a notice of the company's license for four weeks in a newspaper circulating in the part of the province where the company's business

(2) See schedule, p. 62.

was carried on. Since the amendment of 1911 this is no longer necessary. (b)

The procedure for registration of an extra-provincial company is similar to that for licensing

CASES UNDER BRITISH COLUMBIA ACT.

There are as yet no decisions upon the Act of 1910, but the drift of judicial opinion may to some extent be gathered from a number of decisions upon the former Act. The decisions upon the Acts of the other provinces are also instructive, if due regard be had to the differences in the terms of the Acts.

Company Suing its Agent.

In *DeLaval Separator Company v. Walworth* (1907), 13 B. C. R. 74, certain machines were forwarded from Winnipeg to the defendant, a sales-agent for the plaintiffs in British Columbia, under a written order obtained by the Winnipeg agent of the company, who was then in British Columbia, and notes to cover the price of the machines were signed by the defendant in British Columbia and forwarded to Winnipeg, being made payable at that place. In an action on the notes the defence was set up that the plaintiff company was not licensed under section 123 (now 139) of the Companies Act, and that the notes were, therefore, illegal and void. It was held by the trial Judge, Hunter, C.J., that although the statute penalized the carrying on of business by unlicensed companies, contracts made in connection with such business were not, therefore, void. It was said: "It would be difficult, if not impossible, to state accurately, and at the same time exhaustively, what would constitute a carrying on of business, but I do not think that where goods are forwarded to an agent for sale, and sold by him in his own name, that is a transaction within the prohibition; and in any event, I very much doubt whether the creating within the jurisdiction of an obligation which is to be performed without the jurisdiction can strictly be said to be carrying on business within the jurisdiction, within the meaning of the prohibition."

On appeal to the full court this decision was sustained, but on different grounds, namely, that the defendant was the agent

of the plaintiffs and was bound to account for and pay over moneys received, to their use, even if the money was paid to him in respect of an illegal transaction, provided that the contract of agency was not itself illegal. And it was held that the making of the contract of agency was not in itself a carrying on of business within the meaning of section 123 (now 139).

Though the point will not be clear before it is passed upon by the courts, it does not appear that there is any change in the new Act to expressly displace the authority of this case for the proposition that an unlicensed company may sue its agent or broker for moneys received to the use of the company in connection with business carried on for the company; though it must be admitted that the language and form of the whole Act does not encourage such an interpretation.

Contract Subject to Approval Outside Province.

In *Waterous Engine Works Co. v. Okanagan Lumber Co.* (1908), 14 B. C. R. 238, it was held by Morrison, J., that the plaintiff company, a company incorporated under the Dominion Companies Act, but not licensed under the provisions of the British Columbia Act relating to extra-provincial corporations, could not recover against the defendants a balance due on a contract for machinery supplied to the defendants. The following passage from the report of the case is significant: "Counsel for the defendants moved to dismiss the action, urging that the order having been taken out by the plaintiffs' agent here, and the contract having been signed here by the defendants, though subject to ratification in Ontario, the contract sued upon was made in British Columbia, and is, therefore, illegal and void by reason of the 123rd section, *supra*: *Northwestern Construction Co. v. Young* (1908), 13 B. C. R. 297. I think the plaintiffs under the circumstances were carrying on or doing business in British Columbia under a contract made in British Columbia."

Claim for Goods Supplied.

In *Northwestern Construction Company v. Young* (1908), 13 B. C. R. 297, the plaintiffs, a California company, sued the defendant Young, a contractor of Vancouver, in a claim for stone supplied the latter. It was held by Cane, Co. J., that while the company was prohibited by the statute from entering into the contract in question, the contract itself was not void. This decision was reversed by the full court, however, which held that

the plaintiffs could not recover upon the contract since it was entered into in contravention of the Act. This decision appears to conflict with the decision of the same court in *DeLaval Separator Company v. Walworth*, but the case can be reconciled upon the reasoning of the full court, that in the latter case the facts did not arise directly out of a business transaction forbidden by the Act.

Legal Proceedings Not "Carrying on Business" Under Former Act.

In the case of *The Charles H. Lilly Company v. The Johnston Fisheries Company* (1908), 14 B. C. R. 174, the plaintiffs had obtained a judgment against the defendant company in the State of Washington, and were bringing suit in British Columbia upon the foreign judgment. The company had gone into liquidation before the action was brought, and on appeal to the full court, the question was raised as to its capacity to appear in the courts without being registered. It was decided with some hesitation and dissent among the members of the court, that in the absence of an express clause the court should not assume that the legislature intended by the Act to interfere with the rule of international "comity by which foreigners, including foreign corporations, are allowed free access to our courts." And it was held that the bringing of an action in the courts was not carrying on business within the meaning of the Act. Since this decision, of course, an express clause has been added which, if not *ultra vires* of the province, displaces the authority of the decision.

QUEBEC LEGISLATION.

In the province of Quebec there is an Act, dating from the 2nd June, 1904, modelled upon the general lines of the Ontario Extra-Provincial Licensing Act, though it is drafted in different phraseology and varies in some important features. Besides this Act, however, there are two other Acts which, though not of the same character, must be reckoned with by extra-provincial companies and should be briefly referred to. One of these is the Act requiring all companies, whether domestic or extra-provincial, carrying on business in the province, to file certain

declarations. The other enactment imposes a provincial franchise tax upon all companies operating in the province. All these enactments appear not as separate statutes, but as divisions of the codified statutes of the province.

Quebec Extra-Provincial License Act.

Under the terms of the Extra-provincial Commercial Corporations and Joint Stock Companies Act (a), "no extra-provincial corporation shall carry on business in the province of Quebec, unless a license under this Act has been granted to it, and unless such license is in force." And "no company, firm, broker, agent or other person shall, as the representative or agent of or acting in any other capacity other than as traveller taking orders for any such extra-provincial corporation, carry on any of its business, unless such corporation has received such license, and unless such license is in force (b).

Companies Included Under Quebec Act.

The Act of the province of Quebec differs from the Acts of all the other provinces in that it expressly excepts from its operation companies incorporated under Dominion legislation (c). There is also an exception of "corporations and companies incorporated under or in virtue of an Act of a legislature of another province of Canada in which corporations and companies incorporated under and in virtue of the laws of the province of Quebec are authorized to do business without being obliged to take out a license therefor." (d) The companies incorporated in Prince Edward Island, and possibly those of Nova Scotia, appear to be the only companies at present covered by this exception. Apart from these exceptions the Act includes all commercial corporations and joint stock companies not incorporated under legislation of the province of Quebec.

Business Included Under Quebec Act.

The only expression limiting the terms "carrying on business" in the Quebec statute is the phrase, "other than as traveller taking orders." It will be noted that in this respect the Act

(a) 4 Edw. IV. c. 34, now R. S. Q., 1909, ss. 6098-6110.

(b) S. 6099.

(c) This evidently embodies the view that the companies incorporated under Dominion legislation are constitutionally exempt from provincial Acts of this nature.

(d) Compare Manitoba Act, 1911, noted ante p. 12.

differs from the Acts of the other provinces, which expressly except business "by correspondence" also. It would appear necessary to assume, however, that such business would not be affected by the Act; and in any case the absence of a clause imposing legal disability leaves such business immune as a matter of practical effect. The question of what constitutes carrying on business under the Act came up before the Privy Council in a recent case (e). An American company with its headquarters in Pittsburg had, without taking out a license for the province of Quebec, sold certain goods in Montreal and throughout the province through an agent acting as a traveller and taking orders, the practice being to consign the goods direct to the customer. It was held that this did not constitute carrying on business within the meaning of the Act, and that the company was not incapable of maintaining an action for infringement of a trademark, though on the merits of the case it was held that they were not entitled to succeed, as the trademark which was the subject of the action was not capable of registration.

Agent May be Resident.

It is worth noting that in this case the agent of the foreign company resided in the province of Quebec, and in fact maintained an office in the City of Montreal, as headquarters for its traveller; though these facts are not referred to in the published reports of the case. It would appear, therefore, that the fact that the agent or representative of a company resides in the province does not bring the company within the Act so long as the agent acts merely "as traveller taking orders."

No Disability Under Quebec Act.

There is no provision in the statute of Quebec incapacitating unlicensed companies from appearing in the courts. In the case of *The Standard Ideal Company v. The Standard Sanitary Manufacturing Company*, above mentioned, it was urged that as business by unlicensed companies was forbidden and penalized by the Act the plaintiffs could not appeal to the courts to enforce their business rights. This argument was, of course, negatived by the holding of the court that the plaintiffs were not carrying on business within the meaning of the Act. But the decision in *Lilly v. Johnston* (f), and the language of the Privy Council in

(e) *Standard Ideal Company v. Standard Sanitary Manufacturing Company*, (1911) A. C. 78.

(f) See ante p. 39.

the case of *The Standard Ideal Company v. The Standard Sanitary Manufacturing Company*, appears to indicate that a breach of the Act by carrying on business does not necessarily carry with it a deprivation of status to appear in the courts. (g)

Penalties Under Quebec Act.

The penalty for carrying on business as an extra-provincial corporation without a license is provided for by the following clause: "Any person doing business for an extra-provincial corporation which has not complied with the requirements of this section is liable to a fine not exceeding \$100 for each offence, and, in default of payment, to imprisonment not exceeding three months (h). Prosecutions under the Act must be instituted within six months after the date of the offence, and are governed by the same procedure as summary convictions under the Criminal Code.

Holding Lands.

In the Province of Quebec, there are restrictions corresponding to those in the other provinces (i) upon the power of a corporation to hold lands (j). A license under the Act empowers an extra-provincial company to deal in and hold immovable property to the same extent as companies locally incorporated (k). As there is no provision for licensing Dominion companies, the powers of such company with respect to real property must depend upon the provisions of the Dominion Companies Act (l).

Procedure for Obtaining License.

The procedure under the Quebec Act is similar to that of the other Acts, and it is necessary to file a petition in a form prescribed by Order-in-Council accompanied by a power of attorney to someone resident in the province, to act as legal representative of the company; but it is not necessary to file the charter or the by-laws of the company.

Fees Under Quebec Act.

The fees under the Quebec Statute are fixed by Order-in-Council. Under the schedule at present in force, a company

48. (g) See, also, *American Hotel Supply Co. v. Fairbanks*, noted post p

(h) Art. 6107.

(i) See ante p. 20.

(j) Civil Code, Arts. 366, 836.

(k) Art. 6104.

(l) See post p. 52.

need pay only upon the amount of capital employed in the province (m).

Declarations to be Made by Incorporated Companies.

Under another provision of the Quebec Statutes (i), "every incorporated company carrying on any labour, trade or business" in the province is required to file with the prothonotary of the Superior Court, or the registrar of the registration division in which it carries on its operations, a declaration showing where, how and when it was incorporated, and where its principal place of business within the province is situated. The declaration must be in a form set out in the Act, and is to be produced by the president, or the principal manager, or the agent of the company, and filed within sixty days after commencing operations. So often as any change in the name of the company or its place of business occurs, a declaration in like manner must be made. A fee of \$1 is payable on filing the declaration. A failure to make and file the declaration required by the Act renders the company liable to a fine of \$200, and its president, principal manager or chief agent, as the case may be, to a fine of \$100 (j). As the fines under this Act are recoverable by any person suing in his own name without the consent of the Attorney-General, there is considerable danger of an imposition at the instance of any common informer who becomes aware of an infraction of the Act. Quite recently an unscrupulous informer in the City of Montreal found considerable profit in blackmailing companies who had unwittingly made themselves liable by not furnishing the required statement. Default in filing the declaration is, however, not a continuous offence, and the penal action must be brought within one year after the company commences business. (n)

This Act appears to be supplementary, in its operation, to the Extra-Provincial Licensing Act. Of the two, the Act respecting the filing of documents is, perhaps, the more dangerous to companies in default. It will be observed that while no exception is made of companies carrying on business through commercial travellers, the language appears to indicate that the scope of the Act is practically co-extensive with that of the Extra-Provincial Licensing Act, since it applies only to companies carrying on "labour, trade or business" in the province.

(m) See schedule of fees given on p. 59.

(i) Arts. 6091-6097.

(j) Art. 6094.

(n) *Croisdill v. Anglo-American Telegraph Co.* (1909), 10 Que. P. R. 397.

Commercial Corporations Tax.

In addition to the provisions above mentioned, commercial corporations are subject in Quebec to the provisions of another division of the provincial statutes imposing upon "every incorporated company carrying on any undertaking, trade or business" in the province, (l) a tax of "one-eighth of one per cent. upon the amount of the paid-up capital to one million dollars, and fifty dollars for each one hundred thousand dollars or fraction of one hundred thousand dollars for all sums over one million dollars," and there is "an additional tax of fifty dollars for each place of business, factory or workshop in the cities of Montreal and Quebec, and of twenty dollars for each place of business, factory or workshop in every other place." But, "the Lieutenant-Governor in Council may allow incorporated companies coming under this division such reduction of taxes for a fixed or undetermined period as he may deem just, in proportion to the nature or importance of their operations in the province, when their real place of business is outside the province, or when their chief office being within the province they employ therein only a part of their paid-up capital, and other manufactories or other establishments representing the larger portion of their capital are situated outside the province; but the tax exacted must never be less than fifty dollars." (m) This is, of course, purely a fiscal provision and appears in the regular Revenue Act of the province.

The taxes are payable annually to the collector of provincial revenue of the revenue district in which the company has its head office (n) On or before the first May in each year every company coming within the purview of the Act is required without awaiting any notice or demand from the government to forward in duplicate to the provincial treasurer, a detailed statement in a form prescribed by regulations under the Act, setting forth the name of the company, the nature of its business, the amount of paid-up capital and the situation of its offices or places of business. (o) In the case of companies commencing to do business in the course of any fiscal year, a statement must be furnished on the day when the business is commenced (p), and such companies are required to pay only a proportionate amount of the taxes from the first day of the month during which they

(l) R. S. Q. Art. 1345.

(m) R. S. Q. Art. 1347.

(n) R. S. Q. Art. 1349.

(o) Art. 1350.

(p) Art. 1350.

commence business. (q) Companies neglecting to file the statement as required by the Act, are liable to a fine of \$10 per day for each day during which the neglect continues. (r) The fines imposed by the Act are recoverable by action by the collector of revenue on behalf of the Crown. (s) Unpaid taxes imposed by the Act may also be recovered with interest in the same way. (t)

THE NOVA SCOTIA ACT.

Form of Act.

The Act in force in Nova Scotia is different in form and operation from those of the other provinces already discussed. The provisions respecting licensing of extra-provincial corporations are contained in an Act treating "of General Provisions Respecting Domestic and Foreign Companies." (b) Under section 22 of the Act "every incorporated company doing business in Nova Scotia, and having gain for its purpose and object, shall, in the month of January in each year transmit to the Provincial Secretary a registration fee according to the following scale: (c) Under the following section companies neglecting or refusing to transmit the fee are rendered liable to a penalty of one hundred dollars for each offence.

The Act also requires (d) that "every incorporated company doing business within the province shall appoint a recognized manager or agent, resident within the province, service upon whom of any process, notice or other document shall be deemed sufficient service upon the company;" and that "a statement shewing the name and address of such manager or agent shall be filed in the office of the Provincial Secretary by every such company."

It is also provided (e), that "every company not incorporated by or under the authority of an Act of the Legislature of Nova Scotia, which carries on business in Nova Scotia, having gain for its purpose or object, shall, before beginning business in

- (q) Art. 1353.
- (r) Art. 1351.
- (s) Art. 1383.
- (t) Art. 1354.
- (b) R. S. N. S. (1900), c. 127.
- (c) The scale of fees is given on p. 60.
- (d) S. 14.
- (e) S. 18.

Nova Scotia, make out and transmit to the Provincial Secretary a statement shewing:

- (a) The corporate name of the company.
- (b) How and under what special or general Act the company was incorporated.
- (c) Where the head office of the company is situated
- (d) The amount of the authorized capital stock.
- (e) The amount of stock subscribed or issued, and the amount paid up thereon.
- (f) The nature of each kind of business the company is empowered to carry on, and what kind or kinds of business is or are carried on or intended to be carried on in Nova Scotia.
- (g) The names of the directors and officers of the company "

Annual Statement in Nova Scotia.

Every such company is also required to transmit annually in the month of January a statement, certified under the hand of its recognized manager-agent or agent, resident within the province, shewing the names of the directors and officers of the company, and the amount of the authorized capital stock and the amount of stock subscribed or issued, and the amount paid up thereon. (b)

Penalties Under Nova Scotia Act.

For failure to file the two last mentioned statements, the Act imposes upon the company a penalty of ten dollars for each day of default; and "every director, manager, secretary, agent, traveller or salesman of such company, who with notice of such default, transacts within Nova Scotia any business whatever for such a company, shall for each day on which he so transacts such business be liable to a penalty of ten dollars." (c)

As a further penalty for failure to make the statement shewing the name and address of the manager or agent, or the annual statement of names of officers, amount of stock, etc., or to transmit the registration fee, the company is liable to have its right to do business in Nova Scotia forfeited (d). Any action for the penalties under the Act must be brought at the instance of the Provincial Secretary (e).

- (b) S. 18 (2).
- (c) S. 18 (3).
- (d) S. 23.
- (e) Ss. 18 (3), 23.

Fees in Nova Scotia.

In the schedule of registration fees Dominion companies are classed along with those locally incorporated and charged fees which are uniformly one-half those charged to companies incorporated by other provinces or by foreign jurisdictions (e). It is to be noted that the fees imposed by this Act are payable annually, thus placing the Act on the basis of a pure revenue measure. No "license" is issued and the "registration," such as it is, is merely incidental to the payment of the tax.

Business Through Commercial Travellers or Correspondence.

It should be noted that the Act makes no exception of business through commercial travellers or correspondence. There are, however, a number of cases in the Nova Scotia courts which throw some light on the question of the operation of the Act in this respect. In *Halifax Hotel Co. v. Canadian Fire Engine Co.* (1906), 41 N. S. L. R. 9, 7, it was held by the Supreme Court of Nova Scotia in an action brought by the plaintiff against the defendant company for an unpaid hotel bill contracted by an agent of the defendant company, who was engaged in the negotiations for the sale of one of the defendants' engines to the City of Halifax, that as the evidence shewed the agent to have been employed only for the one transaction, and no further or other business was contemplated, this did not constitute "carrying on business" within the province, within the meaning of Order 47 of the Supreme Court, which deals with proceedings against various companies.

In *City of Halifax v. McLaughlin Carriage Company* (1907), 39 S. C. R. 171, the question was referred to the Supreme Court of Nova Scotia and appealed to the Supreme Court of Canada, whether the defendants, an Ontario company, were liable to a license fee under the charter of the City of Halifax, which provides that every "company, corporation, association or agency doing business in the City of Halifax" (certain companies being excepted), "shall pay an annual license fee of one hundred dollars." The defendant company agreed with a dealer in Halifax to supply him with carriages and give him the sole right to sell the same in a territory named, on commission, all moneys and securities given on any sale to the property of the company, and goods not sold within a certain time, to be returned. The goods were supplied and the dealer assessed for the same as his personal prop-

(e) The table of fees is given on p. 60.

erty. It was held by the Supreme Court that the company was not "doing business within the City of Halifax within the meaning of the clause in the city charter.

These cases appear to indicate that an occasional transaction through a non-resident traveller or the supplying of goods to a commission agent, would not be considered as "carrying on business" in Nova Scotia, so as to bring a company within the terms of the registration Act under consideration.

No Disability Under Nova Scotia Act.

The Nova Scotia Act imposes no such disabilities as those under the Ontario Act. In one case it was urged that a company which had not complied with the Act was under an implied disability to resort to the courts of the province. In *American Hotel Supply Co. v. Fairbanks* (1907), 11 N. S. L. R. 144, the plaintiff company, a company incorporated in the State of Illinois, and having its head office at Chicago, sought to recover damages against the defendant for breach of a contract made at Halifax. The company had not filed its statement as required by section 18 of the Act respecting Domestic and Foreign Companies mentioned above, and was, therefore, subject to the penalties under that Act. The Supreme Court of Nova Scotia held that non-compliance with the provisions of the statute did not render invalid contracts entered into by the company within the province, nor prevent the company recovering thereon (x).

PRINCE EDWARD ISLAND.

The province of Prince Edward Island by "An Act to Impose certain Taxes on certain Companies and Associations and Brewers," imposes, among a variety of other taxes, "upon all companies, whether incorporated or not, and associations whose principal office and organization is not within the province, doing business in this province, other than those enumerated, by themselves or by their agent residing in the province, by selling any goods, wares or merchandise in this province, or by soliciting or canvassing for orders either by themselves or by their said resident agent for the sale, exchange or purchase of any goods, wares or merchandise within this province, either by production

(x) Cf. the effect of the statute of Quebec, p. 41.

of samples, photographs, catalogues, printed or written matter, the sum of one hundred dollars each."

This tax is payable in semi-annual instalments on the first of June and December of each year to the Provincial Secretary. The manager, agent or sub-agent or every person who transacts, negotiates or solicits any business for or on behalf of any company, is made personally liable for the tax, but the company also remains liable. If the tax is not paid it may be recovered as a Crown debt with interest and costs by the Provincial Secretary-Treasurer.

There was also in force until 1909, a tax on "commercial travellers;" but in that year all the Acts imposing taxes on trades and commercial travellers were repealed. (v)

The present Act does not impose any penalty or incapacity for default in payment of the tax, other than interest on the tax as a debt; nor is there any machinery for its recovery apart from an ordinary action by the Provincial Secretary-Treasurer for the amount due as a debt.

It will be noted also that it is only where there is an agent residing in the province that the Act applies, so that business through commercial travellers or correspondence is not affected.

CONSTITUTIONAL QUESTIONS.

The question has been raised whether the Acts of some of the provinces have not gone beyond the constitutional powers of the provinces under the British North America Act, and while the constitutionality of the Acts has been upheld in a number of cases in the provincial courts, the question is by no means finally disposed of.

The constitutionality of the Acts must be considered in a three-fold aspect as affecting (a) companies incorporated in other provinces of Canada, (b) companies incorporated by the Dominion Parliament, (c) companies incorporated in foreign jurisdictions; with a possible subdivision of the last of the three into (i) companies incorporated under Imperial legislation, and (ii) companies incorporated in foreign countries or other British colonies.

In dealing with the constitutionality of the Act in general, it must be considered that reference is made to the type of Act

(v) 9 Edw. V. c. 6, s. 1.

in force in Ontario, and not to such Acts as those of Nova Scotia and Prince Edward Island.

Acts as "Direct Taxation."

If the purpose of the Acts could be referred solely or even primarily to the raising of the license fees as a revenue, the Acts might be considered as coming under the head of "direct taxation within the province in order to the raising of a revenue for provincial purposes," which is one of the items of provincial jurisdiction under the British North America Act (a); though it might doubtless be urged that as the license fees are based upon the nominal capital of the company, and as there is no attempt to levy the tax upon specific property within the province, the Acts are *ultra vires* as purporting to tax property outside the province, the Acts being distinguishable from that in question in *Bank of Toronto v. Lamb*, 12 A. C. 575, where the tax was upon property within the province levied partly upon the basis of the nominal capital of the bank. If the Acts could be brought entirely under this head of direct taxation there would be nothing to prevent their applicability to all the classes of companies above mentioned. But the majority of the Acts contain features which place them beyond the pale of mere taxing Acts and introduce far-reaching constitutional problems. (b)

Licensing Power of the Provinces.

The provinces have also power to impose "shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes" (c). In some the provincial decisions the Acts have been upheld as coming under this head. It may be doubted, however, notwithstanding these decisions, whether this item of provincial jurisdiction is broad enough to cover a license upon corporate capacity or status as distinguished from licenses to carry on certain trades or occupations (d).

Provincial Companies.

As regards companies incorporated by other provinces there appears to be no answer to the argument that, as the legislation of any province is effective only within the boundaries of the

(a) S. 92 (2).

(b) See ante p. 10.

(c) S. 92 (9).

(d) See *Brewers' and Maltsters' Case*, (1897) A. C. 237.

province, a company incorporated by one province must accept its power to operate in another province, and the recognition of its corporate capacity within that other province upon such terms as are dictated by the other province. In this view it would be in order for the province to require the companies incorporated by another province to comply with the terms of the extra-provincial licensing Acts before recognizing their corporate existence or their capacity to do business in the province or to maintain actions in the courts of the province. If, however, the Acts are to be supported upon the ground of taxation, there would still remain the question referred to above as to the power to tax property beyond the province. Though in some of the provinces this objection might be obviated by the clause for reducing the fee on proof that only a limited proportion of the capital is employed in the province.

Dominion Companies.

The most important of the constitutional problems is that raised by the attempt of the provinces to bring within the operation of the Acts companies incorporated by the Dominion Parliament and authorized to carry on business throughout the Dominion. In all of the provinces except Quebec the Acts apply in terms to Dominion companies. The most serious feature of the Acts in relation to all companies, whether provincial, Dominion or foreign, is the provision imposing a total want of capacity to maintain actions for the enforcement of business rights. While it may be competent for one province to dictate the terms upon which the corporate capacities of companies incorporated by another province shall be recognized, it may be doubted, notwithstanding certain decisions in the provincial courts, whether any province has the power to suspend, or to impose terms upon, the recognition of corporate capacities validly conferred by the Dominion Parliament. The provinces, in demanding of a Dominion company that it shall take out a license before its capacity to maintain actions is recognized, are in effect attempting to take away from the company an element of its corporate capacity, the power of suing and being sued, and to restore it to the company upon the terms imposed by the Acts. Of all the artificial capacities conferred upon a corporation, that of suing and being sued is, perhaps, the most essential, and in attacking and purporting to suspend this capacity the provinces are in effect attacking the power of the Dominion to incorporate companies for the purpose of carrying on trade and commerce. Dominion companies are in

effect treated as foreign corporations, and are obliged to submit to a re-authorization by each of the provinces before their right to carry on business in the province is recognized.

It is to be noted also that in some of the provinces the granting of licenses is discretionary, and the application for a license must state what powers it is proposed to exercise in the province, and this application may be granted or refused. In other words, the provincial authorities claim the right to select from amongst the corporate powers of a Dominion company, those powers which the company shall be allowed to exercise within the province. In Ontario, companies are required, for instance, to state whether they desire to hold lands, and the license when issued operates as a license in mortmain. (e) The Dominion Companies Act gives express power to companies incorporated thereunder to "acquire, hold, mortgage, sell and convey any real estate requisite for the carrying on of the undertaking of the company." (f) The power to hold land is one of the most important ancillary powers of a commercial company, and the conferring of such a power would seem to lie as readily within the jurisdiction of the Dominion in the case of a commercial company as in the case of a bank or a railway company. It is difficult to see how a province could deny to a banking or railway corporation the power to hold lands without a license in mortmain. In one province, Quebec, indeed the power of Dominion companies to hold lands seems to rest entirely upon the terms of the Dominion Act. (g)

It was said in one case (h), that a Dominion Act dispensing with the necessity of a license in mortmain would not prevent the provinces from passing laws preventing altogether or restricting and regulating the holding of land by corporations in such provinces. But it is difficult to reconcile this dictum with later decisions of the Privy Council. (i)

The provincial point of view is that while the Dominion Act confers upon companies the *capacity* to hold land, such capacity is subject to the general laws of the province, which may require the obtaining of a license (j). But there is a wide difference between such general laws, as for instance the registry Acts,

(e) See ante p. 20.

(f) S. 29.

(g) See ante p. 42.

(h) Per Armour, C.J., in *McDiarmid v. Hughes* (1888), 16 O. R. 570.

(i) E.g., *City of Toronto v. Bell Telephone Co.* (1905), A. C. 52; *La Compagnie Hydraulique de St. Francois v. Continental Heat and Light* (1900), A. C. 194.

(j) *Lefroy, Legislative Power*, p. 617; *Waterous Engine Works Co. v. Okanagan Lumber Co.* (1908), 14 B. C. R. 238.

requiring a company to register its deeds of lands, and an Act which denies to a company powers specifically conferred by the Dominion Parliament. And if there were any authority for the fine distinction between *capacity* and *power* involved in the provincial argument, it would be displaced by the terms of the provincial Acts, which expressly deal with the "capacity" of extra-provincial companies (k). It does not appear clear, therefore, that a Dominion company would be subject to a forfeiture of its lands in default of obtaining a provincial license: and whatever efficacy the provincial laws may possess as fiscal measures, it may be doubted whether they have the effect of divesting or suspending any powers specifically conferred upon companies in virtue of Dominion legislation.

The question of the validity of the Acts as affecting Dominion companies has been considered in a number of cases. In *Rex v. Massey-Harris Company* (1905), 9 Can. Cr. Cas. 25, 6 Terr. L. R. 126, a test prosecution was brought to determine the validity of the Ordinance of the North-West Territories as regards companies incorporated by the Dominion. The Supreme Court of the North-West Territories held the Act valid viewed as a measure of provincial taxation, though it was seriously questioned whether the Territorial Assembly had not gone beyond its power in demanding of the defendant company compliance with certain requirements as conditions precedent to the obtaining of a license.

In *Waterous Engine Works Company v. Okanagan Lumber Company* (1908), 14 B. C. R. 238, the question of the validity of the British Columbia Act was also considered, and the Act was upheld on the ground that while the capacity to carry on business had been conferred upon the company by the Dominion, the business must be carried on in conformity with provincial laws, one of which required the taking out of a license. But at that time the British Columbia Act did not contain the clause expressly providing that an unlicensed company "shall not be capable of maintaining any action."

In *Heney v. Birmingham* (1909), 36 N. B. R. 337, the question was also raised, although the case was afterwards decided upon another point. The report of the case quotes counsel before the full court arguing as follows:

"The plaintiff company being incorporated under the Dominion Act has power to carry on business throughout the Dominion of Canada. The provincial legislature therefore

(k) See Ontario Act, s. 14.

cannot prohibit them from carrying on business in this province or subject them to penalties for doing so. In so far as this license Act prohibits the plaintiff from doing business it is *ultra vires*. There is a distinct provision in the British North America Act giving authority to the local legislature to impose shop, saloon, tavern, auctioneer and other licenses, but that would not include a tax such as this upon a Dominion company."

Foreign Companies.

As regards companies incorporated by foreign jurisdictions, the Acts of several of the provinces have been upheld by judicial decisions (b). It may, perhaps, be suggested, however, that as the point was not raised in these cases, it should not be considered as finally determined that the provincial legislatures are the proper bodies to prescribe the terms upon which the corporate status of foreign companies is to be recognized in Canada.

Interference with Trade and Commerce.

The Dominion Parliament being vested with exclusive jurisdiction to regulate trade and commerce, it is a question whether some of the Acts, particularly that of British Columbia, do not trench upon this power of the Dominion. In its practical working out the British Columbia Act is an obstacle in the way of interprovincial trade. In his speech on introducing the amendments of 1911 to the Act, the provincial Attorney-General based his advocacy of the Act upon the necessity of protecting local industries against the cheaper products of the eastern provinces. While this expression could not be made use of in an argument before the courts, it might well be that the courts would recognize the manifest tendency of the Act as affecting trade, and hold it to be in reality an attempt to regulate inter-provincial commerce.

Comparison with the United States.

Something of a parallel to the situation in Canada is to be found in the United States, whose constitution resembles in many respects that of this country. In the United States, as in Canada, both the federal and the local governments exercise the power of incorporating corporations. But the federal government has no

(b) *International Text Book Co. v. Brown* (1907), 13 O. L. R. 644; *Lilly v. Johnston* (1908), 14 B. C. R. 174; *Standard Ideal Company v. Standard Sanitary Manufacturing Company* (1911), A. C. 78.

general companies Act under which corporations are created, though there is at present a movement under way for the introduction of such an Act. In the meantime the majority of corporations receive their charters under the State laws, and some of the States, notably New Jersey, make, as it were, a specialty of facilitating the incorporation of companies. It is to be observed, however, that under the United States constitution a rule obtains which is the reverse of that under the British North America Act. The federal government enjoys only such powers as are committed to it by the constitution, the States retaining the remaining powers in virtue of their inherent sovereignty. Amongst the residuary power of the States there is the undoubted power of incorporating companies for the purpose of carrying on manufacture and trade.

Once incorporated, however, State corporations may carry on business throughout the United States. There are in some States laws similar to the extra-provincial licensing Acts of the provinces of Canada, but their operation is understood to be confined to what is called *intra-state* business as distinguished from *inter-state* business,—that is, so long as the business is conducted between two points, one of which is within and the other without the State, it is not affected by the licensing law. This rule excludes, of course, business through commercial travellers and correspondence. Such business comes under the head of "*inter-state* commerce," which is under the control of the federal government, and State laws, in so far as they would operate to interfere with such business, are unconstitutional. (a)

With regard to companies incorporated under federal legislation, these are regarded as agencies for the carrying out of the powers of the federal government, and State interference with the exercise of their powers is unconstitutional (b).

Jurisdiction of Dominion and Provinces over Incorporation of Companies.

It has been stated that in their practical operation the extra-provincial licensing Acts of most of the provinces are essentially allied to the class of the legislation known as "company law." In British Columbia the provisions relating to extra-provincial companies are incorporated in the general Companies Act. In other provinces their character is similarly recognized. The

(a) *Attorney-General v. Electric, etc., Co.*, 188 Mass. 239; *Milan M. & M. Co. v. Gorton*, 93 Tenn. 59, 27 S. W. 591, 26 L. R. A. 135. See notes in 24 L. R. A. 311, and 24 C. C. A. 13.

(b) *McCulloch v. Maryland*, 4 Wheat. 316.

relative jurisdictions of the Dominion and the provinces in the field of company law are as yet very ill defined.

The British North America Act gives to the provincial legislatures jurisdiction over "the incorporation of companies with provincial objects." The jurisdiction to incorporate companies with objects other than "provincial" rests, of course, with the Dominion Parliament.

It is rather remarkable that while the boundaries of the respective jurisdictions of the Dominion and the provinces over other subjects have been fairly well ascertained by judicial decisions, the doubts which ever since Confederation surrounded the whole subject of the relative powers of the provinces and the Dominion over the incorporation and control of companies have only recently been brought specifically before the courts. In a recent case of the Canadian Pacific Railway Company v. Ottawa Fire Insurance Company (1908), 39 S. C. R. 405, the question for the first time came before the Supreme Court whether a company incorporated by a provincial legislature had the power or capacity to carry on business outside the province. The Supreme Court on a division of four judges to two, upheld the claim of the provincial company, but the opinions of the judges upon the constitutional aspect of the case were far from being conclusive.

Reference in Supreme Court.

In view of the inconclusiveness of this case a reference has been submitted by the Governor-General to the Supreme Court in the form of a stated case, in which the opinion of the court is asked upon the chief questions now outstanding between the provinces and the Dominion in the matter of company control. An effort was made on the part of the provinces to have the question settled by an amendment to the British North America Act, which would assure to the provinces the powers which had been exercised by them up to the present time. The matter was discussed at a conference of representatives of the various provinces at Ottawa on the 29th March, 1910. The Dominion Government, however, declined to enter into any arrangement for an amendment of the British North America Act until the legal questions involved were decided by the courts. Upon submission of the reference in October, 1910, objection was made on behalf of the provinces to the jurisdiction of the Supreme Court to hear and determine certain of the questions submitted. At the time of writing an appeal is pending before the Privy Council

in England upon the preliminary question of the jurisdiction of the Supreme Court.

Amongst the questions submitted to the Supreme Court are the following:—

(1) What limitation exists under the British North America Act, 1867, upon the power of the provincial legislatures to incorporate companies?

What is the meaning of the expression "with provincial objects" in section 92, article 11 of the said Act? Is the limitation thereby defined territorial, or does it have regard to the character of the powers which may be conferred upon companies locally incorporated, or what otherwise is the intention and effect of the said limitation?

(2) Has a company incorporated by a provincial legislature under the powers conferred in that behalf by section 92, article 11 of the British North America Act, 1867, power or capacity to do business outside of the limits of the incorporating province? If so, to what extent and for what purpose?

Has a company incorporated by a provincial legislature for the purpose, for example, of buying and selling or grinding grain, the power or capacity, by virtue of such provincial corporation, to buy or sell or grind grain outside of the incorporating province?

(5) Can the powers of a company incorporated by a provincial legislature be enlarged, and to what extent, either as to locality or objects by

(a) the Dominion Parliament?

(b) the legislature of another province?

(6) Has the legislature of a province power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the province unless or until the companies obtain a license so to do from the government of the province, or other local authority constituted by the legislature, if fees are required to be paid upon the issue of such licenses?

For examples of such provincial legislation see Ontario, 63 Vict. cap. 24; New Brunswick, Cons. Sts. 1903, cap. 18; British Columbia, 5 Edw. VII., cap. 11.

(7) Is it competent to a provincial legislature to restrict a company incorporated by the Parliament of Canada for the purpose of trading throughout the whole Dominion in the exercise of the special trading powers so conferred, or to limit the exercise of such powers within the province?

Is such a Dominion trading company subject to or governed by the legislature of a province in which it carries out or proposes to

carry out its trading powers, limiting the nature or kinds of business which corporations not incorporated by the legislature of the provinces may carry on, or the powers which they may exercise within the province, or imposing conditions which are to be observed or complied with by such corporations before they can engage in business within the province?

Can such a company so incorporated by the Parliament of Canada be otherwise restricted in the exercise of its corporate powers or capacity, and how, and in what respect by provincial legislation?

APPENDIX

SCHEDULES OF FEES.

ONTARIO.

Under section 18 of the Act, corporations applying for a license are required to pay such fees as may from time to time be approved by the Lieutenant-Governor-in-Council. The following are the terms of the Order-in-Council now in force under this section.

"Fees for licenses will be the same as fees charged for the incorporation of companies under the Ontario Companies Act, but will be calculated on the amount of capital authorized to be used in Ontario."

The fees under the Companies Act are as follows:

When the proposed capital of an applicant company is \$40,000 or less, the fee shall be \$100.

When the proposed capital is more than \$40,000, but does not exceed \$100,000, the fee shall be \$100, and \$1 for every \$1,000 or fractional part thereof in excess of \$40,000.

When the proposed capital is more than \$100,000, but does not exceed \$1,000,000, the fee shall be \$100, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$100,000.

When the proposed capital is more than \$1,000,000, the fee shall be \$385 for the first \$1,000,000, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$1,000,000.

Filing Fees.

Filing the annual statement of an extra-provincial corporation with any capital up to and including \$100,000	87 00
Filing the annual statement of an extra-provincial corporation with any capital exceeding \$100,000	10 00

QUEBEC.

Under section 6106 of the Act, the Lieutenant-Governor-in-Council has power to fix fees. The schedule of fees is as follows:

1. When the capital stock of the company is \$40,000 or less, the fee will be \$100,000.

2. When the capital stock of the company is over \$40,000, but does not exceed \$100,000, the fee will be \$100,00, and \$1.00 for every \$1,000 or fractional part thereof in excess of \$40,000.

3. When the capital stock of the company is over \$100,000, but does not exceed \$1,000,000, the fee will be \$100, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$100,000.

4. When the capital stock is over \$1,000,000, the fee will be \$385, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$1,000,000.

EXTRA-PROVINCIAL CORPORATIONS.

When the company employs only a portion of its capital here, the tariff fee (from 1 to 4), will be charged on such part so employed here, upon an affidavit or solemn declaration, stating what portion is so employed.

If the company increases this portion, it must produce an affidavit or declaration thereof, and shall then pay an additional fee to cover the proportion of increased capital so employed in the province, according to the above tariff (from 1 to 4).

NEW BRUNSWICK.

Under section 22 of the Act, corporations applying for a license in New Brunswick are required to pay the fees mentioned in schedule "A" to the Act.

Under section 13 (2), the license shall be in force for one year and may be renewed from time to time, each renewal license to be for one year.

Schedule "A" to the Act is as follows:

If the capital of the company does not exceed the sum of one hundred thousand dollars, the fee to be fifty dollars.

If the capital of the company exceeds the said sum of one hundred thousand dollars, the fee to be one hundred dollars.

NOVA SCOTIA.

Section 22 of the Statute treating "Of the General Provisions respecting Domestic and Foreign Companies," imposes registration fees as follows:—

Annual registration fees for companies incorporated by or under the authority of an Act of the Legislature of Nova Scotia, or of the Parliament of Canada, having a nominal capital

Not exceeding \$ 10,000	\$ 5 00
" 100,000	10 00
" 500,000	20 00
Exceeding 500,000	25 00

Annual registration fees for companies not incorporated by or under the authority of an Act of the Legislature of Nova Scotia nor of the Parliament of Canada, having a nominal capital

Not exceeding \$ 10,000	\$10 00
" 100,000	20 00
" 500,000	40 00
Exceeding 500,000	50 00

PRINCE EDWARD ISLAND.

Sub-section 13 of section 1 of the "Act to Impose certain Taxes on certain Companies, Associations and Brewers" imposes a tax of \$100 per year, payable in semi-annual instalments, on the 1st June and 1st December.

MANITOBA.

Under section 21 of the Act, companies applying for licenses are required to pay such fees as may be fixed by Order-in-Council.

It is also provided that with respect to companies having an established business outside of Manitoba, the fee may be reduced to such sum as may be thought just, having regard to the nature and importance of the business of the company in Manitoba, and the amount of capital used therein.

The following is a schedule of fees prescribed by Order-in-Council dated the 28th July, 1900:

When the capital stock does not exceed \$ 5,000.....	\$ 15
Over \$ 5,000 and not exceeding 20,000.....	40
Over 20,000 and not exceeding 40,000.....	60
Over 40,000 and not exceeding 60,000.....	75
Over 60,000 and not exceeding 80,000.....	90
Over 80,000 and not exceeding 100,000.....	100
Over 100,000 and not exceeding 125,000.....	110
Over 125,000 and not exceeding 150,000.....	120
Over 150,000 and not exceeding 175,000.....	130
Over 175,000 and not exceeding 200,000.....	140
Over 200,000 and not exceeding 300,000.....	150
Over 300,000 and not exceeding 400,000.....	160
Over 400,000 and not exceeding 500,000.....	170
Over 500,000 and not exceeding 1,000,000.....	200
Over 1,000,000, \$20 for each additional \$100,000 or fraction thereof.	

Besides the license fee, section 21 also requires a fee to be paid by each company on making the annual return required by section 15 of the Act. This fee is \$5 if the capital stock of the company does not exceed \$100,000, and \$10 if the capital stock of the company exceeds \$100,000.

SASKATCHEWAN.

Under section 4 of the Act, companies applying for registration are required to pay the fees set out in Schedule "A" of the Act, which is as follows:

Table of fees to be paid to the Registrar by a company registered under this Act:

For registration of a company whose nominal capital does not exceed \$20,000\$40 00

For registration of a company whose nominal capital exceeds \$20,000, the above fee of \$40, with the following additional fees regulated according to the amount of capital, that is to say:

For every \$5,000 or part of \$5,000 after the first \$20,000 up to \$100,000 5 00

For every \$10,000 or part of \$10,000 after the first \$100,000 up to \$500,000 3 00

For every \$100,000 or part of \$100,000 thereafter up to \$1,000,000, 20 00

The fee for publishing the certificate of registration in The Saskatchewan Gazette is included in the above fees.

Under section 5a, companies are, with certain exceptions, required to pay the annual fees set out in Schedule "B," which is as follows:

Companies with a capital not exceeding \$25,000\$10 00

Companies with a capital exceeding \$25,000, but not exceeding \$50,000 20 00

Companies with a capital exceeding \$50,000, but not exceeding \$100,000	\$40 00
Companies with a capital exceeding \$100,000, but not exceeding \$500,000	50 00
Companies with a capital exceeding \$500,000	75 00

ALBERTA.

Under section 4 of the Ordinance, companies applying for registration are required to pay the fees set out in schedule "A" to the Act, which are as follows:

Fees Payable on Registration.

For companies with a capitalization not exceeding \$100,000	1 00
Exceeding \$100,000 but not exceeding \$200,000	2 00
Exceeding \$200,000 but not exceeding \$500,000	3 00
Exceeding \$500,000 but not exceeding \$1,000,000	4 00
Exceeding \$1,000,000 but not exceeding \$3,000,000	5 00
For every additional \$1,000,000 or fractional part thereof over \$3,000,000, an additional sum of	1 00
Also add for advertising in "Gazette"	5 00

There is also an annual fee of \$5.00 payable with the annual return

BRITISH COLUMBIA.

Under sections 153 and 159, companies applying for licenses or registration are required to pay the fees mentioned in table "B" of the first schedule to the Act. Table "B" gives the following list of fees:

For registration or licensing of a company whose nominal capital does not exceed \$10,000, a fee of\$25 00

For registration or licensing of a company whose nominal capital exceeds \$10,000, the above fee of \$25.00 with the following additional fees, regulated according to the amount of nominal capital, that is to say: -

For every \$5,000 of nominal capital or part of \$5,000 after the first \$10,000 up to \$25,000	\$5 00
For every \$5,000 of nominal capital or part of \$5,000 after the first \$25,000 up to \$500,000	2 50
For every \$5,000 of nominal capital, or part of \$5,000 after the first \$500,000	1 25

In the case of an extra-provincial company having a nominal capital exceeding four hundred and fifty thousand dollars, which proves to the satisfaction of the Registrar that it is actually carrying on an established business beyond the province in which at least fifty per cent. of its subscribed capital is invested, there shall be accepted in commutation of the fees prescribed by this table a fee of two hundred and fifty dollars.

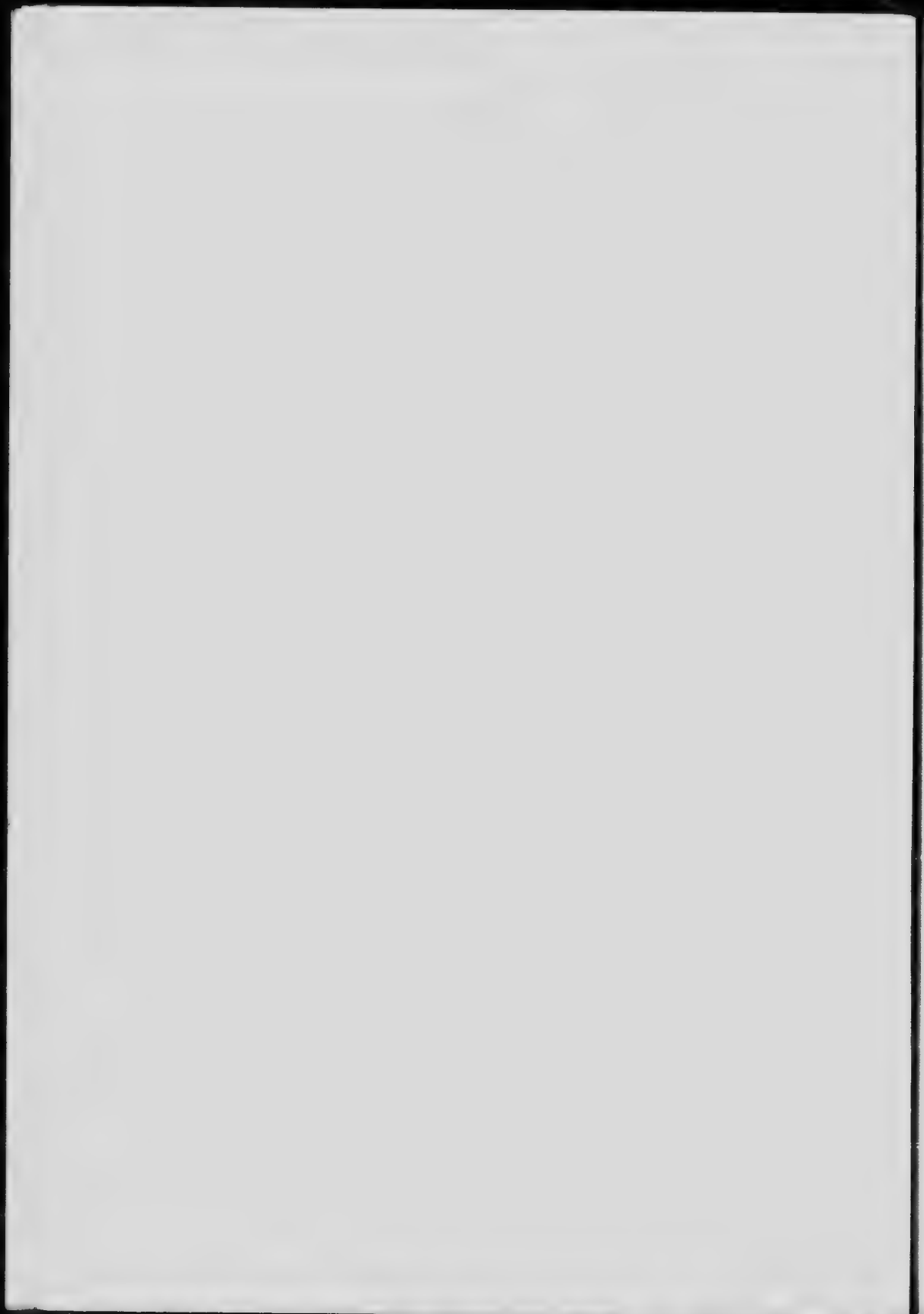
In addition to these fees, there are certain fees for filing documents and publishing a notice of the license in the British Columbia "Gazette." The filing fees are usually \$2.00, and the "Gazette" fees from \$6.50 upward according to the length of the clause in the Company's charter setting forth the "objects" of the company.

YUKON TERRITORY.

Under section 5 of the Act, companies applying for a license are required to pay a fee according to the schedule annexed to the Act. This schedule is as follows:

Tariff of Fees.

If the capital stock is \$400,000 or more	\$500 00
If the capital stock is \$200,000 or more, and less than \$400,000 ..	400 00
If the capital stock is \$100,000 or more and less than \$200,000	300 00
If the capital stock is \$40,000 or more and less than \$100,000	200 00
If the capital stock is \$10,000 or more and less than \$40,000	150 00
If the capital stock is less than \$10,000	100 00



APPENDIX B

PROVINCIAL STATUTES.

ONTARIO.

An Act Respecting the Licensing of Extra Provincial Corporations.

(1900) 63 Vict. c. 24; Amended by 1 Edw. VII. c. 19.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act the expression "Extra Provincial Corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Ontario. (63 V. c. 24, s. 1.)

2. Extra Provincial Corporations of the classes mentioned in this section are not required to take out a license under this Act, viz., corporations created by or under authority of—

Class I. An Act of the Legislature of the late Province of Upper Canada, or by Royal Charter of the Government of that Province;

Class II. An Act of the Legislature of the late Province of Canada, or by Royal Charter of the Government of that Province, and carrying on business in Ontario at the date of the commencement of this Act;

Class III. Corporations which have before the commencement of this Act received from the Government of Ontario a license to carry on business in Ontario, or which have been authorized by Act of the Legislature of Ontario to carry on business in Ontario, provided that such license or Act is in force at the date of the commencement of this Act;

Class IV. Corporations now or hereafter licensed or registered under the provisions of The Ontario Insurance Act, or of The Loan Corporations Act. (63 V. c. 24, s. 2, part.)

Class V. Corporations liable to payment of taxes imposed by chapter 8 of the Ontario Statutes for 1890, intituled *An Act to Supplement the revenues of the Crown in the Province of Ontario*; or by chapter 31 of the said Statutes for 1899, intituled *An Act respecting Brewers' and Distillers' and other Licenses*.

Class VI. Corporations not having gain for any of their objects. (63 V. c. 24, s. 2, part; 1 Edw. VII. c. 19, s. 1.)

3. Extra Provincial Corporations of the classes mentioned in this section are required to take out a license under this Act, viz., Corporations (other than those mentioned in section 2) created by or under the authority of—

Class VII. An Act of the Legislature of the late Province of Canada or by Royal Charter of the Government of that Province, authorized to carry on business in Upper Canada, but not carrying on business in Ontario at the date of the commencement of this Act;

Class VIII. An Act of the Dominion of Canada, and authorized to carry on business in Ontario;

Class IX. Corporations not coming within any of the foregoing classes (63 V. c. 24, s. 3.)

4. A corporation coming within Class VII. or VIII. shall, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on its business and exercise its powers in Ontario. (63 V. c. 24, s. 4.)

5. A Corporation coming within Class IX. may, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on the whole or such parts of its business and exercise the whole or such parts of its powers in Ontario as may be embraced in the license; subject, however, to such limitations and conditions as may be specified therein. (63 V. c. 24, s. 4.)

6. No Extra Provincial Corporation coming within class VII. or VIII. or IX., shall carry on within Ontario any of its business unless or until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent, or other person shall, as the representative or agent of or acting in any other capacity for any such Extra Provincial Corporation, carry on any of its business in Ontario unless and until such corporation has received such license and unless such license is in force.

Provided that taking orders for or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative or no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of this Act.

Provided further that this section shall not apply until the first day of November, A.D. 1900, to any such corporation which at the date of the commencement of this Act is carrying on business in Ontario.

Provided also that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Ontario, or that it was at the date of the commencement of this Act carrying on business in Ontario, shall in any prosecution for an offence against this section rest upon the accused. (63 V. c. 24, s. 6; 1 Edw. VII. c. 19, s. 2.)

7. An Extra Provincial Corporation coming within class VII., or VIII., or IX., may apply to the Lieutenant-Governor-in-Council for a license to carry on its business or part thereof, and exercise its powers or part thereof, in Ontario; and upon the granting of such license, such corporation may thereafter, while such license is in force, carry on in Ontario the whole or such parts of its business, and exercise in Ontario the whole or such parts of its powers as may be embraced in the license; subject however to the provisions of this Act and to such limitations and conditions as may be specified in the license. Provided always that no limitations or conditions shall be included in any such license which could limit the rights of a corporation coming within class VII. or class VIII., to carry on in Ontario all such parts of its business, and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein. (63 V. c. 24, s. 7; 1 Edw. VII. c. 19, s. 3.)

8. The Lieutenant-Governor-in-Council may from time to time make regulations respecting the following matters namely:—

(a) The evidence required, upon the application for a license under this Act, respecting the creation of the corporation applying, and its powers and objects and its existence as a valid and subsisting corporation;

(b) The appointment and continuance by the corporation of a person or company as its representative in Ontario on whom service of process, notice or other proceedings may be made, and the powers to be conferred on such representative;

(c) The forms of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act;

and such regulations shall be published in the Ontario Gazette.

The Lieutenant-Governor-in-Council may make orders with respect to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay. (63 V. c. 24, s. 8.)

9. Upon the application for a license, the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations made hereunder have been complied with; and the Provincial Secretary, the Assistant Provincial Secretary or such other officer may for the purposes aforesaid, or for any other purpose under this Act, take any requisite evidence in writing under oath or affirmation.

Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration or by affidavit or by deposition before the Provincial Secretary, or Assistant Provincial Secretary, or other officer as aforesaid, or before any Justice of the Peace or Commissioner for taking Affidavits, or Notary Public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations.

Or if made outside of Ontario, may be made before any person authorized to take affidavits under the Registry Act. (63 V. c. 24, s. 9.)

10. A corporation receiving a license under this Act may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of Incorporation or other creating instrument, acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any interest therein, to the same extent and for the same purposes, and subject to the same conditions and limitations as if such corporation had been incorporated under The Ontario Companies Act, with power to carry on the business and exercise the powers embraced in the license. (63 V. c. 24, s. 10.)

11. Notice of the granting of a license under this Act shall be given by the Provincial Secretary in The Ontario Gazette, and a copy of such Gazette containing such notice shall be prima facie evidence, in all proceedings by and against the corporation and otherwise under this Act or otherwise, of the granting of the license and of the terms thereof mentioned in the notice; and a copy of the license certified by the Provincial Secretary or Assistant Provincial Secretary shall be sufficient evidence of the license before all courts and tribunals. (63 V. c. 24, s. 11.)

12. A corporation receiving a license under this Act, shall on or before the eighth day of February in every year during the continuance of the license, make and transmit to the Provincial Secretary a statement, under oath and according to a form approved or by the Lieutenant-Governor-in-Council, containing information similar to that required under section 131 of The Ontario Companies Act, or so much thereof or such additional information as may be prescribed in such form, and the Lieutenant-Governor-in-Council may at any time require the corporation to supply such further and other information as shall seem to him to be reasonable and proper. (63 V. c. 24, s. 12; 8 Edw. VII. c. 33, s. 43.)

13. If a corporation receiving a license under this Act makes default in observing or complying with the limitations and conditions of such license, or the provisions of section 12 of this Act, or the regulations respecting the appointment and continuance of a representative in Ontario, the Lieutenant-Governor-in-Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation and restore such license.

Notice of such suspension, revocation, removal or restoration shall be given by the Provincial Secretary in The Ontario Gazette. (63 V. c. 24, s. 13.)

14. If any Extra Provincial Corporation coming within Class VII., or VIII., or IX., shall, contrary to the provisions of section 6 hereof, carry on in Ontario any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business;

and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit or other proceeding in any Court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said section 6.

Provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit or other proceeding may be maintained as if such license had been granted or restored or such suspension had been removed before the institution thereof. (63 V. c. 24, s. 14.)

15. If any company, firm, broker, agent or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an Extra Provincial Corporation, carry on any of its business in Ontario, such company, firm, broker, agent or other person shall incur a penalty of twenty dollars for every day upon which it, he or they carry on such business. (63 V. c. 24, s. 15.)

16. The Lieutenant-Governor-in-Council may, when or after granting a license, remit in whole or part, any penalty incurred under this Act by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or in part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs as the case may be, shall not be recoverable. (63 V. c. 24, s. 16.)

17. The penalties imposed by this Act shall be recoverable only by action at the suit of or brought with the written consent of the Attorney-General of Ontario, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards. (63 V. c. 24, s. 17.)

18. There shall be paid to His Majesty for the public uses of Ontario by every corporation requiring a license under this Act, such fees as may from time to time be approved of by the Lieutenant-Governor-in-Council. (3 Edw. VII. c. 7, s. 53 (1).)

There shall be paid to His Majesty for the public uses of Ontario, upon transmitting to the Provincial Secretary the statement required by section 12 hereof, the fee of five dollars, if the capital stock of the company does not exceed the sum of one hundred thousand dollars, and a fee of ten dollars if the capital stock of the company exceeds the said sum of one hundred thousand dollars, and until such fee has been paid such statement shall be deemed not to have been made and transmitted as required by said section. (63 V. c. 24, s. 18, last part.)

18a. The fees payable by Extra Provincial Corporations coming within class III. of section 2 of chapter 24 of the Acts passed in the 63rd year of the reign of Her late Majesty Queen Victoria, intitled an Act respecting the licensing of Extra Provincial Corporations for filing the annual statement or return required of such corporations shall be as follows viz., \$5 if the capital stock of the company does not exceed \$100,000, and \$10 if it does exceed \$100,000. (1 Edw. VII. c. 18, s. 4.)

19. An extra provincial corporation which is not required by this Act to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under The Ontario Companies Act, with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to His Majesty for the public uses of Ontario such fee as the Lieutenant-Governor may prescribe, and compliance with section 12 hereof may be dispensed with by the Lieutenant-Governor in whole or in part. (63 V. c. 24, s. 19.)

20. A statement showing the licenses issued under this Act during the preceding calendar year, and the authorized capital stocks of the companies licensed, and the fee paid for each license, shall be laid before the Legislature at each session thereof. (63 V. c. 24, s. 20.)

21. Notice of the passing of this Act in such form and with such particulars thereof as the Provincial Secretary may think proper, shall be published by him in The Ontario Gazette and in The Canada Gazette, and in the official gazette or other official publication of each Province of Canada, for such time as to him may seem best. (63 V. c. 24, s. 21.)

22. This Act shall commence and take effect on and after the first day of July A.D. 1900, and on and after that day section 107 of The Ontario Companies Act shall be and the same is hereby repealed. (63 V. c. 24, s. 22.)

QUEBEC.

Extra-Provincial Corporations and Joint Stock Companies.

Revised Statutes of Quebec (1900), Title XL, Chapter III., Section IV.

6098. Extra-provincial corporations, for the purpose of this section, comprise all commercial corporations and joint stock companies not constituted by or in virtue of an Act of the Legislature of this Province, or of the Parliament of Canada, of the Legislature of the late Province of Lower Canada, or that of the late Province of Canada, except:

(a) Loan and investment societies licensed under the provisions of section second of chapter fourth of title eleventh of these Revised Statutes (articles 7158 to 7164);

(b) Insurance companies, mutual benefit societies and charitable societies, the same being governed by section twenty-second of this chapter, (articles 6832 to 7009);

(c) Corporations and companies incorporated under or in virtue of an Act of a Legislature of another Province of Canada in which corporations and companies incorporated under and in virtue of the laws of the Province of Quebec are authorized to do business without being obliged to take out a license therefor. (4 Edw. VII. c. 34, s. 1, 9 Edw. VIII. c. 62, s. 1.)

6099. No extra-provincial corporation shall carry on business in the Province unless a license under this section has been granted to it, and unless such license is in force.

No company, firm, broker, agent or other person shall, as the representative or agent, nor acting in any capacity other than as traveller taking orders for any such extra-provincial corporation, carry on any of its business in the Province, unless such corporation has received such license, and unless such license is in force. (4 Edw. VII. c. 34, s. 2.)

6100. Such license shall be granted by the Lieutenant-Governor upon petition by the extra-provincial corporation, provided that the corporation:

(a) Deposits in the office of the Provincial Secretary a copy of its charter, articles of association or other deed constituting the corporation, certified by the officer having the custody of the original;

(b) Establishes that it is so constituted as to carry out the obligations it may contract;

(c) Deposits in the office of the Provincial Secretary a power of attorney constituting a chief agent in the province for the purpose of receiving service in any suit or proceeding against it, and declaring where the principal office of the corporation is to be established;

(d) Pays the fees that may be fixed for such license by the Lieutenant-Governor-in-Council;

(e) Establishes that its name is not that of any other known company, nor liable to be confounded therewith, or otherwise on public grounds objectionable.

The Lieutenant-Governor may, at any time, refuse to grant or to continue a license to a company which does not comply with the requirements of this sub-section, unless such name be changed or modified to the satisfaction of the Provincial Secretary.

Such change or modification of name shall in no way affect the corporate existence, rights or obligations of the company. (4 Edw. VII. c. 34, s. 3; 9 Edw. VII. c. 62, s. 2.)

6101. Notice of the granting of such license shall be published by the Provincial Secretary in the Quebec Official Gazette, and from the date of such publication such extra-provincial corporation may commence business. (4 Edw. VII. c. 34, s. 4.)

6102. Whenever any extra-provincial corporation changes its chief agent, or the location of its chief office, it shall forward to the Provincial Secretary a copy of the new power of attorney concerning the same, and notice thereof shall be given in the Quebec Official Gazette. (4 Edw. VII. c. 34, s. 5.)

6103. If an extra-provincial corporation, licensed in virtue of this section, changes its name, it shall send to the Provincial Secretary a copy of the document establishing that such change has been legally effected, and such copy shall be certified by the officer who has charge of the original.

A new license may then be granted by the Lieutenant-Governor, and notice thereof shall be given by the Provincial Secretary in the Quebec Official Gazette. (4 Edw. VII. c. 34, s. 5a; 8 Edw. VII. c. 66, s. 1.)

6104. Any extra-provincial corporation receiving a license under this section may, subject to the limitations and conditions of the license and of the laws of this Province, and also subject to the provisions of its charter, acquire, hold, mortgage, alienate and otherwise dispose of immovable property in the Province, to the same extent as if incorporated by letters patent of the Lieutenant-Governor, with power to carry on the business and exercise the powers embraced in the license. (4 Edw. VII. c. 34, s. 6.)

6105. If an extra-provincial corporation receiving a license under this section does not observe or comply with the limitations and conditions of such license, or the regulations respecting the appointment and continuance of a representative in the Province, the Lieutenant-Governor-in-Council may suspend or revoke such license wholly or in part, and may remove such suspension or cancel such revocation and restore such license.

Notice of such suspension, revocation, removal, or restoration shall be given by the Provincial Secretary in the Quebec Official Gazette. (4 Edw. VII. c. 34, s. 7.)

6106. The Lieutenant-Governor-in-Council may, from time to time, make, amend, and repeal regulations respecting the following matters:

(a) The forms of licenses, powers of attorney, applications, notices, statements, and other documents relating to applications and other proceedings under this section;

(b) The fees to be collected and received for granting the licenses, and publication of notices under this section;

(c) Generally whatever may be necessary for the efficient working of this section. (4 Edw. VII. c. 34, s. 8.)

6107. Any person doing business for an extra-provincial corporation, which has not complied with the requirements of this section, is liable to a fine not exceeding one hundred dollars for each offence, and, in default of payment, to imprisonment not exceeding three months. (4 Edw. VII c. 34, s. 9.)

6108. Prosecutions under this section shall be instituted within six months after the date of the offence, and shall be governed by the provisions of Part XV. of the Criminal Code. (4 Edw. VII. c. 34, s. 10.)

6109. A statement showing the licenses issued under this section during the preceding fiscal year, and the authorized capital of the extra-provincial corporations licensed, and the fee paid for each license, shall be laid before the Legislature at each session thereof. (4 Edw. VII. c. 34, s. 11.)

6110. Nothing in this section shall prevent articles 6091 to 6097 from applying to extra-provincial corporations. 4 Edw. VII. c. 34, s. 14.

CHAPTER III.

Section iii.

6091. (1) Every incorporated company carrying on any labor, trade or business in this Province (except banks), shall cause to be delivered to the prothonotary of the Superior Court of each district, or to the registrar of such registration division in which it carries on or intends to carry on its operations or business, a declaration in writing to the effect hereinafter provided, made and signed by the president when its chief office or principal place of business is in this Province, or by the principal manager or chief agent in the province when it has only branches or agencies therein.

(2) Such declaration shall state the name of the company, where and how it was incorporated, the date of its incorporation, and where its principal place of business within the province is situated.

(3) Such declaration shall be according to form "A," or in words to that effect, and shall be produced by the president, or the principal manager or the chief agent, as the same may be, of every such incorporated company, and filed within sixty days after commencing operations and business.

(4) When and so often as any change takes place in the name of the company, or in its principal place of business in the province, a declaration thereof shall in like manner be made within sixty days from such change. R. S. Q. 4754.

6092. The Prothonotary and the Registrar shall enter such declaration in the books kept by them respectively for the registration of declarations of partnership. R. S. Q. 4755.

6093. The Prothonotary and the Registrar shall be entitled to a fee of one dollar for the entry of every declaration made under the authority of this section. R. S. Q. 4756.

6094. A failure to make and file the declarations required by article 6091, shall render each of the incorporated companies above mentioned liable to a fine of two hundred dollars, and the president, principal manager or chief agent, as the case may be, to a fine of one hundred dollars. R. S. Q. 4756.

6095. If the declaration is made and filed after the expiration of the sixty days above mentioned and before any suit for a contravention of this section has been instituted, then the company making and filing such declaration, its president, principal manager or chief agent, as the case may be, shall no longer be deemed to have been in default.

Notwithstanding any provision of law concerning prescription, an action may be taken against the company, its president, principal manager, or chief agent, for contravention of this section, so long as the company continues to carry on any enterprise, trade or business without complying with this section.

Nevertheless, if the company ceases to carry on any enterprise, trade or business, without having complied, in due time, with this section, an action may be taken against it, its president, principal manager, or chief agent, whether such persons are or are not still in office, within two years from the last day on which the company carried on such enterprise, trade or business. Amended 1910, 1 Geo. V. c. 33.

6006. The fines imposed by this section are recoverable before any court having jurisdiction in civil cases to the amount of such fine, by any person suing in his own name, or by the Attorney-General in the name of His Majesty. R. S. Q. 4758.

6007. One-half of all fines recovered shall belong to the party suing for the same, and the other half to the Crown, to form part of the consolidated revenue fund of the province, unless the suit be brought on behalf of the Crown only, in which case the whole of the fine shall belong to the Crown for the uses aforesaid. R. S. Q. 4759.

DECLARATION.

Province of Quebec,)
District of)

The.....(name).....Company
The.....(name).....Company was incorporated in (name of the country, province, etc.) by letters patent, or as the case may be) granted (or registered, as the case may be) on the (date).

Its principal place of business in the Province of Quebec is at (name of town, etc.)

In testimony whereof this declaration in duplicate is made and signed by me (name, address and calling) the president (principal manager, or chief agent, as the case may be) of the said company at (name of place) on the (date). R. S. Q. 4760, Form A.

NEW BRUNSWICK.

Respecting the Imposition of Certain Taxes on Certain Incorporated Companies and Associations.

Cons. Stats. 1903, c. 18; Amended 1905, 5 Edw. VII. c. 28; Amended 1906, 6 Edw. VII. c. 26.

PART II.

8. In Part II. of this chapter, being the portion of this chapter hereinafter following, the expression "extra-provincial corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of New Brunswick. 3 Edw. VII. c. 25, s. 1.

9. Extra-provincial corporations of the classes mentioned in this section are not required to take out a license under this Part, viz.: -

Class I.—Corporations which have before the first day of July, A.D. 1903, received from the Government of New Brunswick a license to carry on business in New Brunswick; or which have been authorized by Act of the Legislature of New Brunswick to carry on business in New Brunswick; provided that such license or Act is in force on said first day of July A.D. 1903.

Class II.—Corporations now or hereafter licensed or registered under the provisions of Part I. of this chapter, or of any Act consolidated therein, or of chapter 86 of these Consolidated Statutes, or the Act 55 Victoria, chapter 36, consolidated therein, or of the Act 2 Edward VII, chapter 101, "An Act relating to the Royal Trust Company," or of chapter 164 of these Consolidated Statutes, or the Act 2 Edw. VII, chapter 106, consolidated therein, "An Act relating to certain trust companies."

Class III. Corporations not having gain for any of their objects. 3 Edw. VII, c. 25, s. 2.

10. Extra-provincial corporations not coming within Class II. and III. mentioned in section 9, are required to take out a license under this Part; the extra-provincial corporations so required to take out a license are hereinafter spoken of as Class IV. 3 Edw. VII, c. 25, s. 3.

11. A corporation coming within Class IV. may, upon complying with the provisions of this part and the regulations made hereunder, receive a license to carry on its business and exercise its powers in New Brunswick. 3 Edw. VII, c. 25, s. 4.

12. No extra-provincial corporation coming within Class IV. shall carry on within New Brunswick any of its business unless and until a license under this part so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent or other person shall, as the representative or agent of, or acting in any other capacity for any such extra-provincial corporation, carry on any of its business in New Brunswick, unless and until such corporation has received such license and unless such license is in force; provided that taking orders for or buying or selling goods, wares or merchandise by travellers or by correspondence, if the corporation has no resident agent or representative, and no office or place of business in New Brunswick, shall not be deemed a carrying on of business within the meaning of this part; provided also, that the onus of proving that a corporation has no resident agent or representative and no office or place of business in New Brunswick, or that it was at the date of the commencement of this part carrying on business in New Brunswick, shall in any prosecution for an offence against this section rest upon the accused. 3 Edw. VII, c. 25, s. 5.

13. (1) An extra-provincial corporation coming within Class IV. may apply to the Lieutenant-Governor-in-Council for license to carry on its business or part thereof, and exercise its powers or part thereof in New Brunswick; and upon the granting of such license such corporation may thereafter, while such license is in force, carry on in New Brunswick the whole or such parts of its business, and exercise in New Brunswick the whole or such parts of its powers as may be embraced in the license; subject, however, to the provisions of this part, and to such limitations and conditions as may be specified in the license.

(2) Such license shall only be in force for one year, and may be renewed from time to time, each renewal license to be for one year. 3 Edw. VII, c. 25, s. 6.

14. The Lieutenant-Governor-in-Council may, from time to time, make regulations respecting the following matters, namely:—

- (a) The evidence required upon the application for a license under this part respecting the creation of the corporation applying and its powers and objects, and its existence as a valid and subsisting corporation;
- (b) The appointment and continuance by the corporation of a person or company as its representative in New Brunswick on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;
- (c) The forms of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this part; and such regulations shall be published in the Royal Gazette. The Lieutenant-Governor-

in-Council may make orders with respect to particular cases where the general regulations may not be applicable, or where they would cause unnecessary inconvenience or delay. 3 Edw. VII. c. 25, s. 7.

15. Upon the application for a license under this part, the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this part and the regulations made hereunder have been complied with; and the Provincial Secretary, the Assistant Provincial Secretary, or such other officer, may, for the purposes aforesaid, or for any other purpose under this part, take any requisite evidence in writing under oath or affirmation. Proof of any matter which may be necessary to be made under this part may be made by statutory declaration or by affidavit, or by deposition before the Provincial Secretary, or Assistant Provincial Secretary, or other officer as aforesaid, or before any justice of the peace or commissioner for taking affidavits or notary public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations; or, if made outside New Brunswick, may be made before any person authorized to take affidavits under The Registry Act, chapter 151 of these Consolidated Statutes. 3 Edw. VII. c. 25, s. 8.

16. A corporation receiving a license under this part may, subject to the limitations and conditions of the license and subject to the provisions of its own charter, act of incorporation or other creating instrument, acquire, hold, mortgage, alienate and otherwise dispose of real estate in New Brunswick, and any interest therein, to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under chapter 85 of these Consolidated Statutes, with power to carry on the business and exercise the powers embraced in the license. 3 Edw. VII. c. 25, s. 9.

17 (1) Notice of the granting of a license under this part shall be given by the Provincial Secretary in the Royal Gazette, and a copy of such Gazette containing such notice shall be prima facie evidence in all proceedings by and against the corporation and otherwise under this part or otherwise, of the granting of the license and of the terms thereof mentioned in the notice; and a copy of the license certified by the Provincial Secretary or Assistant Provincial Secretary shall be sufficient evidence of the license before all Courts and tribunals. 3 Edw. VII. c. 25, s. 10.

(2) In any action or other legal proceeding for or against a company then licensed under this chapter as herein provided, it shall not be requisite to set forth the mode of incorporation of such company, otherwise than by mention of it under its corporate name as an incorporated company, and a copy of the Royal Gazette containing a notice of the granting of a license for the then current year shall, in all such proceedings by or against such company be prima facie proof of the incorporation of such company and its right to sue and be sued. (6 Edw. VII. A.D. 1906, c. 26.)

18. If any extra-provincial corporation coming within Class IV. shall, contrary to the provisions of section 12 hereof, carry on in New Brunswick any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this part, it shall not be capable of maintaining any action, suit or other proceeding in any Court in New Brunswick in respect of any contract made in whole or in part within New Brunswick in the course of or in connection with business carried on contrary to the provisions of said section 12; provided, however, that upon the granting or restoration of the license or the removal of any suspension thereof, such action, suit or other proceedings may be maintained as if such license had been granted or restored, or such suspension had been removed before the institution thereof. 3 Edw. VII. c. 25, s. 11.

19. If any company, firm, broker, agent or other person shall, contrary to the provisions of section 12 hereof, as the representative or agent of or

acting in any other capacity for an extra-provincial corporation, carry on any of its business in New Brunswick, such company, firm, broker, agent or other person shall incur a penalty of twenty dollars for every day upon which it, he or they so carry on such business. 3 Edw. VII. c. 25, s. 12.

20. The Lieutenant-Governor-in-Council may, when or after granting a license, remit in whole or in part any penalty incurred under this Part by the corporation receiving the license, or by any representative or agent thereof, and may also remit in whole or in part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable. 3 Edw. VII. c. 25, s. 13.

21. The penalties imposed by this Part shall be recoverable only by action at the suit of or brought with the written consent of the Attorney-General of New Brunswick, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards. 3 Edw. VII. c. 25, s. 14.

22. For a license to a corporation coming within Class IV., or any first or subsequent renewal thereof, such corporation shall pay to His Majesty for the public uses of New Brunswick the fee mentioned in Schedule (A) hereto, and no license shall be issued until the fee therefor is paid; provided, that with respect to a company carrying on business in New Brunswick on the ninth day of May, 1903, and carrying on also an established business outside of New Brunswick, the Lieutenant-Governor-in-Council may reduce the fee payable for its license to such sum as he may think just, having regard to the nature and importance of its business in New Brunswick and the amount of capital used therein; provided, also, that with respect to a company not carrying on business in New Brunswick on the ninth day of May, 1903, but carrying on outside of New Brunswick an established business when applying for a license under this Part, the Lieutenant-Governor-in-Council may reduce the fee payable for such license to such sum as he may think just, having regard to the nature and importance of the business proposed to be carried on in New Brunswick, and the amount of capital proposed to be used therein. A company seeking a reduction under this section shall give to the Provincial Secretary such statements and information respecting its business and financial position as he may call for, and shall verify the same in such manner as he may require. 3 Edw. VII. c. 25, s. 15.

23. An extra provincial corporation which is not required by this Part to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license and subject to the provisions of its own charter, act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate and otherwise dispose of real estate in New Brunswick and any interest therein, to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under Chapter 85 of these Consolidated Statutes, with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to His Majesty for the public uses of New Brunswick such fee as the Lieutenant-Governor may prescribe. 3 Edw. VII. c. 25, s. 16.

24. A statement showing the licenses issued under this Part during the preceding calendar year and the authorized capital stock of the companies licensed, and the fee paid for each license, shall be laid before the Legislature at each session thereof.

25. It shall not be lawful for an Extra-Provincial Corporation coming within Class IV. mentioned in said Act to acquire or hold real or personal property within the Province without being duly licensed under the provisions of the said Act, and no Registrar of Deeds shall receive any conveyance to or from any such corporation without the production to such Registrar of a license under the said Act, in force at the time when such conveyance is submitted for registry. (5 Edw. VII., A.D. 1905, c. 28.)

SCHEDULE A

(SECTION 22.)

Fees for Licenses to Corporations coming within Class IV

If the capital stock of the company does not exceed the sum of one hundred thousand dollars, the fee to be fifty dollars.

If the capital stock of the company exceeds the said sum of one hundred thousand dollars, the fee to be one hundred dollars. 3 Edw., c. 25, Sched. (A.)

NOVA SCOTIA.

Of General Provisions Respecting Domestic and Foreign Companies, R. S. N. S. (1900) 63 Vict. c. 12.

Amended 1903-4, 3 and 4 Edw. VII. cc. 17 and 24; Amended 1908, 8 Edw. VII. c. 30

1. Every company shall, where no other provision is specially made, be capable in its corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which it may alter at pleasure, to elect in such manner as it deems proper all necessary officers, and to fix their compensation and to define their duties, and to make by-laws and regulations, not contrary to law nor repugnant to the charter or Act by which any such company is created, for its own government and the due management of its affairs. R. S. c. 78, s. 1.

2. Every company may, by its by-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of members which shall constitute a quorum, the number of shares which shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers, and the purchase, conveyance and sale of its real and personal property; and may annex penalties to its by laws not exceeding in any case the sum of twenty dollars for any one offence. R. S. c. 78, s. 2.

3. The first meeting of every company shall, unless otherwise provided in the charter or Act of incorporation, be called by notice signed by any one or more of the persons named as incorporators in the charter or Act of incorporation, and setting forth the time, place and purposes of the meeting, and such notice shall, seven days at least before the meeting, be delivered to each member or left at his place of residence, or published in some newspaper of the county in which the company is established or proposed to be established, or where its principal place of business is situated or proposed to be situated, or if there is no newspaper in the county, then in two newspapers published in the City of Halifax. R. S. c. 78, s. 4.

4. Whenever by reason of the death, absence or disability of the officers of any company there is no person authorized to call or preside at a meeting of the members thereof, any three or more of the members may call such meeting by giving the notice as required by law. R. S. c. 78, s. 5.

5. The members when so assembled may choose a chairman, and may elect officers to fill all vacancies then existing, and may transact such other business as might by law be transacted at a regular meeting of the company. R. S. c. 78, s. 6.

6. The shares or stock of every company shall be deemed to be personal property for all purposes. R. S. c. 78, s. 7.

7. The real property of any company may be sold under execution in the same manner as its personal property. R. S. c. 78, s. 8.

8. Every charter or Act of incorporation shall expire, unless the company thereby incorporated goes into operation within three years from the passing thereof unless otherwise specially provided therein. R. S. c. 78, s. 9.

9. Every company, the charter or Act of incorporation of which, after such company has gone into operation, expires or is annulled by forfeiture or otherwise, shall nevertheless be continued as a body corporate for the term of three years after the time when such charter or Act of incorporation has so expired or been annulled, for the purpose of prosecuting and defending actions by or against it, and of enabling it to settle and close its business, to dispose of its property, and to divide its capital stock; but not for the purpose of continuing the business for which such company was established. R. S. c. 78, s. 10.

10. When the charter of any company so expires or is annulled, the Supreme Court, on application of any creditor of such company or of any member thereof at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the company and to collect the debts and property due and belonging thereto, with power to prosecute and defend actions in the name of the company, to appoint agents and to do all other acts which might be done by such company that are necessary for the final settlement of the unfinished business of the company, and the power of such trustees may be continued beyond the three years if the court thinks necessary. R. S. c. 78, s. 11.

11. No member of any company shall be relieved from individual liability for its debts or obligations; but each member thereof shall be liable as a partner to the same extent as if no company existed; and in case any execution issued on any judgment against the company is returned unsatisfied the individual real and personal property of every member of the company shall be liable to respond such judgment under execution issued thereon in the same manner as if the same was a private debt due by such member, unless the special Act creating the company exempts its members from such liability; and any member who is compelled to pay any moneys on account of the debts of the company may recover the same by action against the company. R. S. c. 78, s. 12.

12. The directors or Board of Managers of any company, the liability of whose members is limited by the Charter or Act of incorporation, unless otherwise specially directed therein, shall in all cases be personally liable for any debt incurred by them on account of the company beyond the amount of the stock subscribed, without the sanction of the company obtained at a meeting thereof held in accordance with the by-laws, unless such larger amount of lending is specially authorized by the charter or Act of incorporation; but this section shall not extend to insurance companies. R. S. c. 78, s. 13.

13. The acts of any company performed within the scope of its charter or Act of incorporation shall be valid, notwithstanding they are not done under or authenticated by the seal of such company. R. S. c. 78, s. 14.

14. (1) Every incorporated company doing business within the province shall appoint a recognized manager or agent resident within the province, service upon whom of any process, notice or other document shall be deemed sufficient service upon the company.

(2) A statement showing the name and address of such manager or agent shall be filed in the office of the Provincial Secretary by every such company.

(3) In default of such appointment, or of the filing of such statement by any such company, or in case of the absence or death of such manager or agent, any process, notice or document may be served on any officer or employee of the company, or for want of such officer or employee, may be posted on a principal building of the company, and such service or posting shall be deemed a sufficient service on the company. 1903-4, c. 24.

15. Repealed, 1903-4, c. 24.

16. The books and accounts of every such company so doing business within the province shall at all times be open to the inspection of such person as the Governor-in-Council appoints to inspect the same. 1893, c. 5, s. 1.

17. Whenever by any charter or Act of incorporation it is provided that any dispute or matter of controversy in which the corporation is interested, or any damages to which it is liable shall be settled or ascertained by arbitration, such provision shall be deemed a "submission to arbitration" within the meaning of that expression in "The Arbitration Act." R. S. c. 78, s. 17.

18. (1) Every company not incorporated by or under the authority of an Act of the Legislature of Nova Scotia, which carries on business in Nova Scotia, having gain for its purpose or object, shall, before beginning business in Nova Scotia, make out and transmit to the Provincial Secretary a statement under oath showing:—

- (a) The corporate name of the company.
- (b) How and under what special or general Act the company was incorporated.
- (c) Where the head office of the company is situated.
- (d) The amount of the authorized capital stock.
- (e) The amount of stock subscribed or issued, and the amount paid up thereon.
- (f) The nature of each kind of business the company is empowered to carry on, and what kind or kinds of business is or are carried on or intended to be carried on in Nova Scotia.
- (g) The names of the directors and officers of the company.

(2) Every such company shall also transmit to the Provincial Secretary in the month of January in each year a statement, certified under the hand of its recognized manager or agent, resident within the province, showing the names of the directors and officers of the company, and the amount of the authorized capital stock, and the amount of stock subscribed or issued, and the amount paid up thereon.

(3) Every such company who fails to comply with the provisions of this section shall be liable to a penalty of ten dollars for every day during which such default continues, and every director, manager, secretary, agent, traveller or salesman of such company, who, with notice of such default, transacts within Nova Scotia any business whatever for such company shall for each day on which he so transacts such business be liable to a penalty of ten dollars, to be recovered in the name of the Provincial Secretary in the Supreme Court or in the County Court.

(4) The Governor-in-Council may, after such statement has been received by the Provincial Secretary, relieve in whole or in part any company or person from any penalty incurred by reason of default in transmitting the same. 1903-4, c. 24.

19. No company shall be bound to see to the execution of any trust whether express, implied or constructive, in respect of any of its shares, and the receipt of a shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether

or not notice of the trust has been given to the company, and the company shall not be bound to see to the application of the money paid on such receipt. 1903, c. 17.

20. The provisions of section 19 shall apply to all companies heretofore incorporated, and to all transfers of stock of such companies heretofore made, and to all payments of and receipts taken for any dividend or money payable in respect to any share or shares heretofore made or given as well as to companies hereafter incorporated. 1903, c. 17.

21 (1) It shall be lawful for any company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or for procuring or agreeing to procure subscriptions for any shares in the company, if such commission paid or agreed to be paid does not exceed ten per cent. of the price at which such shares are sold.

(2) Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discounts or allowances to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares of the company, whether the shares or moneys be so applied by being added to the purchase money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money being paid out of a nominal purchase money or contract price or otherwise.

(3) The provisions of this section shall apply to every company heretofore incorporated or that may hereafter be incorporated, and all commissions heretofore paid out of capital account or income for underwriting which would have been legal and valid under the provisions of this section, if the same had then been in force, are legalized and declared to be and to have been legal and valid. 1903, c. 17.

22. Every incorporated company doing business in Nova Scotia, and having gain for its purpose or object, shall, in the month of January in each year, transmit to the Provincial Secretary a registration fee according to the following scale, that is to say:

Annual registration fees for companies incorporated by or under the authority of an Act of the Legislature of Nova Scotia or of the Parliament of Canada, having a nominal capital

Not exceeding \$10,000.....	\$ 5.00
" " 100,000.....	10.00
" " 500,000.....	20.00
Exceeding 500,000.....	25.00
Mutual insurance companies having no capital stock	50.00

Annual registration fees for companies not incorporated by or under the authority of an Act of the Legislature of Nova Scotia nor of the Parliament of Canada, having a nominal capital

Not exceeding \$10,000.....	\$10.00
" " 100,000.....	20.00
" " 500,000.....	40.00
Exceeding 500,000.....	50.00
Mutual insurance companies having no capital stock	50.00

23. Any company which shall neglect or refuse to file the statement as required by section 14 of this chapter, and any company which shall neglect or refuse to transmit its registration fee as required by section 22 of this chapter, shall be liable to a penalty of one hundred dollars for each such neglect or refusal, to be recovered in the name of the Provincial Secretary in the Supreme Court or in the County Court; and any company which shall neglect or refuse for two consecutive years to file the statement as required by section 14 or sub-section 2 of section 18 of this chapter,

or to transmit its registration fee as required by section 22 of this chapter, shall, in addition to any other penalty or penalties to which it is liable, be liable to have its charter, or its right to do business in Nova Scotia, as the case may be, forfeited. 1903-4, c. 24.

24. This chapter, except sections 14, 16, 22 and 23, shall not apply to companies incorporated under the Nova Scotia Joint Stock Companies' Act, or under the Nova Scotia Companies' Act. 1903-4, c. 24.

25. In any action, suit, prosecution or proceeding under this Act, it shall be sufficient to allege that any Company is or was at any time or times doing business in Nova Scotia, without proving the same, and the burden shall be upon the defendant of proving that such Company is not or was not at the time or times so alleged doing business in Nova Scotia. 8 Edw. VII., c. 30.

PRINCE EDWARD ISLAND.

An Act to impose certain Taxes on Certain Companies and Associations and Brewers.

(1900), 63 Vict. c. 6; Amended 1901, 1 Edw. VII. c. 9; Amended 1902, 2 Edw. VII. c. 6; Amended 1906, 6 Edw. VII. c. 17.

Be it enacted by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island, as follows:

1. In order to provide for the exigencies of the Public Service there shall be and are hereby imposed upon the Companies, Associations and Brewers hereinafter mentioned, the taxes hereinafter specifically named, which taxes each of such Companies, Associations and Brewers respectively shall annually pay to the Provincial Secretary for the use of the Province.

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(13) Upon all companies, whether incorporated or not, and Associations whose principal office and organization is not within the Province, doing business in this Province other than those previously enumerated, by themselves or by their agent residing in this Province, by selling any goods, wares or merchandise in this Province, or by soliciting or canvassing for orders either by themselves or by their said resident agent for the sale, exchange or purchase of any goods, wares or merchandise within this Province, either by production of samples, photographs, catalogues, printed or written matter, or simply by word of mouth without the production of samples, photographs, catalogues, printed or written matter, the sum of one hundred dollars each. (1901, 1 Edw. VII., c. 9, s. 10; 1902, 2 Edw. VII., c. 6, s. 3).

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2. The taxes imposed by this Act shall be payable semi-annually on the first juridical day of the months of June and December in each year, commencing on the first juridical day of December following the passage

hereof, on which day the first semi-annual payment of the taxes aforesaid shall be due and payable by such companies, Associations or persons to the Provincial Secretary of the Province.

3. The Manager, Agent or Sub-agent of every Company or Association mentioned in this Act, or the person who transacts, negotiates or solicits any business for or on behalf of any such Company or Association, or the person or persons who has or have the right to sell or grant orders for the sale or delivery of coal, oil, goods, wares and merchandise of such Companies or Associations, or of debentures, bank notes, or shares, in Companies for such companies, firms, associations, or individuals, known as brokers, shall be personally liable for the tax imposed by this Act on the company or association of which he is Manager, Agent or Sub-agent, or for which he transacts, negotiates or solicits any business, but nothing in this section shall be construed to exonerate or discharge the said Companies or Associations from the payment of such taxes. (1900, 1 Edw. VII., c. 17, s. 4.)

4. (1) Every tax imposed by the said Act shall on the date on which it becomes or became due become a Crown debt, and if not paid on such date may be recovered with legal interest thereon or full costs of suit by an action brought either in the Supreme Court or County Court. Such suit to be brought in the name of the Provincial Secretary-Treasurer of this Province as any ordinary suit is brought in such courts; and in case such action shall be brought in the Supreme Court it shall only be necessary to have one count in the Declaration to be filed in such suit, namely a count for money due from the defendant to the plaintiff on accounts stated between them, and under this count the plaintiff may give evidence to establish the levying of such tax and the liability of the defendant to pay the same. (1901, 1 Edw. VII., c. 9, s. 1).

(2) The defendant shall only be required to plead one plea to such declaration, namely, "never indebted," under which plea he may set up any legal or equitable defence to such action in the same manner as if he had pleaded specially or demurred to the said declaration. (1901, 1 Edw. VII., c. 9, s. 2).

(3) The said suit shall be commenced by an ordinary writ of summons, such as is now used in suits brought in the said Courts and in the Supreme Court, the same time for appearing, declaring and pleading, shall be allowed to either party as is now allowed by the ordinary practice of the said Court, unless otherwise ordered by a Judge of said Court. (1901, 1 Edw. VII., c. 9, s. 3).

(4) In all cases where the head office of any Company, whether incorporated or not and liable to a tax under this Act, is without this Province, the summons issued in such suit may be served by leaving a copy with any agent acting or purporting to act as agent of the said Company or Corporation in this Province, and by mailing a copy of such summons in a registered letter addressed to the head office of the defendant Company outside of this Province, and such service and mailing shall be deemed a good service.

(5) Costs shall not be awarded or adjudged against Her Majesty in any action instituted in Her Majesty's name by the Provincial Secretary under this Act, but on the recommendation of the court the Provincial Secretary may in his discretion pay to the party in favor of which judgment has been rendered the costs to which he may deem such party equitably entitled.

6. The taxes imposed by this Act shall form part of the Revenue of the Province, and any expenses incurred in carrying out this Act may, from time to time, be paid out of such revenue.

7. Nothing in this Act shall affect the liability of the several Companies and Associations mentioned in the Act passed in the 57th year of Her present Majesty's reign, chapter 3, and in the Act passed in the 62nd year of Her present Majesty's reign, chapter 18, for the taxes imposed by the said Acts, and which have accrued due before the coming into force of this Act, nor the remedy for the recovery of the said taxes provided by said Acts, but for all other purposes the said Acts are hereby repealed.

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MANITOBA.

An Act respecting the Licensing of Extra-Provincial Corporations

9 Edw. VII. c. 10; Amended by 1 Geo. V. c. 9.

His Majesty by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1. In this Act the expression "extra-provincial corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Manitoba.

2. Extra-provincial corporations of the classes mentioned in this section are not required to take out a license under this Act, viz.:

Class I.—Corporations which have, before the commencement of this Act, received from the Government of Manitoba a license to carry on business in Manitoba, or which have been authorized by Act of the Legislature of Manitoba, to carry on business in Manitoba, provided that such license or Act is in force at the date of the commencement of this Act;

Class II.—Corporations now or hereafter licensed or registered under the provisions of "The Manitoba Insurance Act;"

Class III.—Corporations liable to payment of taxes imposed by "The Corporations Taxation Act" or "The Railway Taxation Act;"

Class IV.—Corporations not having gain for any of their objects.

3. Extra-provincial corporations of the classes mentioned in this section are required to take out a license under this Act, viz., corporations (other than those mentioned in section 2) created by or under the authority of—

Class V.—An Act of the Dominion of Canada, and authorized to carry on business in Manitoba;

Class VI.—Corporations not coming within any of the foregoing classes.

4. A corporation coming within class V. shall, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on its business and exercise its powers in Manitoba.

5. A Corporation coming within class VI. may, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on the whole or such part of its business and exercise the whole or such parts of its powers in Manitoba as may be embraced in the license; subject, however, to such limitations and conditions as may be specified therein.

6. No extra-provincial corporation coming within class V. or VI. shall carry on within Manitoba any of its business unless and until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent or other person shall, as the representative or agent of or acting in any other capacity for any such extra-provincial corporation, carry on any of its business in Manitoba unless and until such corporation has received such license and unless such license is in force; provided that taking orders for or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative and no office or place of business in Manitoba, shall not be deemed a carrying on of business within the meaning of this Act; provided further that this section shall not apply until the first day of November, A.D. 1900, to any such corporation which at the date of the commencement of this Act is carrying on business in Manitoba, provided also that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Manitoba, or that it was at the date of the commencement of this Act carrying on business in Manitoba, shall, in any prosecution for an offence against this section, rest upon the accused.

7. An extra-provincial corporation coming within class V. or VI. may apply to the Lieutenant-Governor-in-Council for a license to carry on its business or part thereof, and exercise its powers or part thereof in Manitoba, and upon the granting of such license such corporation may thereafter, while such license is in force, carry on in Manitoba the whole or such parts of its business and exercise in Manitoba the whole or such parts of its powers as may be embraced in the license; subject, however, to the provisions of this Act and to such limitations and conditions as may be specified in the license.

FORMALITIES.

8. Any such company, institution or corporation applying for such license shall file in the office of the Provincial Secretary of Manitoba a certified copy of the charter, Act of incorporation or articles or memorandum of association of such company, institution or corporation, with a declaration or proof that said company, institution or corporation is still in existence and legally authorized to transact business under its said charter or Act of incorporation or articles or memorandum, and a copy of the last auditor's report; and shall also file, as aforesaid, a power of attorney to the principal agent or the intended manager of said company, institution or corporation in this Province, signed by the President or vice-president or managing director or two directors and by the secretary thereof, sealed with the corporate seal (if any) of the said company, institution or corporation and verified as to its authenticity by the statutory declaration of the principal agent or manager of such company, institution or corporation, or of any person cognizant of the facts necessary for such verification; which power of attorney must expressly authorize such agent or manager within the said Province to accept process in all suits and proceedings against such company, institution or corporation within the province, and must declare that service of process on such agent or manager in respect of such suits or proceedings shall be legal and binding on such company, institution or corporation, to all intents and purposes whatever, and waiving all claims of error by reason of such service; and such company, institution or corporation may from time to time, by a new or other power of attorney verified as aforesaid, and accompanied by similar declaration as aforesaid, to replace the agent or manager formerly appointed.

(a) After such certified copy of the charter and such power of attorney in this province are filed as aforesaid, any process in any suit or proceedings against such company, institution or corporation, for any liability, may be served upon such manager or agent, until he be so replaced as aforesaid, and thereafter upon his successor from time to time duly appointed thereunder, in the same manner as process may be served upon the proper officer of any company, incorporated in the Province; and all proceedings may be had thereupon to judgment and execution in the same manner as in any civil suit in the Province.

(b) The provisions hereof so far as they relate to the giving of a power of attorney to the principal agent or intended manager of the company, institution or corporation in this Province, and the filing of such Power of Attorney with the Provincial Secretary, shall not apply to any company, institution or corporation having its head office within the Province of Manitoba.

9. Upon the application for a license the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations made hereunder have been complied with; and the Provincial Secretary, the Deputy Provincial Secretary, or such other officer, may for the purposes aforesaid, or for any other purpose under this Act, take any requisite evidence in writing under oath or affirmation. Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration or by affidavit or by deposition before the Provincial Secretary, or Deputy Provincial Secretary, or other officer as aforesaid, or before any justice of the peace or commissioner for taking affidavits or notary public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations, or, if made outside of Manitoba, may be made before any person authorized to take affidavits under "The Registry Act."

10. A corporation receiving a license under this Act may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, acquire, hold, mortgage, alienate and otherwise dispose of real estate in Manitoba and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under "The Manitoba Joint Stock Companies Act," with power to carry on the business and exercise the powers embraced in the license.

(a) From and after the 24th March, 1911, every mortgage, conveyance, lease or other instrument affecting land, executed under the seal of any such corporation, or, in case such corporation has no seal, executed by such corporation, and signed by the president, vice-president, or manager of the corporation and by the secretary or treasurer thereof, or by two of the directors, trustees or other members of the board of management or other governing body, shall be binding on the corporation according to the tenor and effect of such instrument.

This sub-section shall not apply to companies incorporated under chapter 79 of the Revised Statutes of Canada, 1906. 1 Geo. V., c. 9.

11. Every company, institution or corporation obtaining such license as aforesaid shall forthwith give notice thereof in the Manitoba Gazette, and in at least one newspaper in the municipality, city or place where the principal agent or manager of such company, institution or corporation in the Province transacts the business thereof or its head office is situated (if in this Province), of which one insertion in said Gazette and newspaper respectively shall be sufficient; and, unless the head office of such company, institution or corporation is in Manitoba, such notice shall state the name of the agent or manager so appointed as aforesaid, or, when a new agent or manager shall be appointed under the provisions hereof, the name of such new agent or manager; and the like notice shall be given when such company shall cease to carry on business within the Province.

12. The provisions of this Act, or of any Act or Acts for which this Act is substituted, relating to matters preliminary to the issue of license, shall be deemed to be directory only; and no licenses issued or which have heretofore been issued under this Act, or said Act or Acts, hereinbefore referred to, shall be held void or voidable on account of any irregularity or insufficiency or non-existence of any matter preliminary to the issue of said license.

13. The powers of any company, corporation or institution, licensed under the provisions of this Act with respect to acquiring and holding real estate, shall be limited in its license to such annual or actual value as may be deemed proper.

14. No company, corporation or other institution, not incorporated under the provisions of the statutes of this Province, shall be capable of taking, holding or acquiring any real estate within this Province, unless under license issued under any statute of this Province in that behalf.

15. A corporation receiving a license under this Act shall, on or before the eighth day of February in every year during the continuance of the license, make and transmit to the Provincial Secretary a statement under oath and according to a form approved of by the Lieutenant-Governor-in-Council containing information similar to that required by section 70 of "The Manitoba Joint Stock Companies Act," or so much thereof or such additional information as may be prescribed in such form, and the Lieutenant-Governor-in-Council may at any time require the corporation to supply such further and other information as shall seem to him to be reasonable and proper.

16. If a corporation receiving a license under this Act makes default in observing or complying with the limitations or conditions of such license, or the provisions of section 15 of this Act, or the regulations respecting the appointment and continuance of a representative in Manitoba, the Lieutenant-Governor-in-Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation, and restore such license. Notice of such suspension, revocation, removal or restoration shall be given by the Provincial Secretary in the Manitoba Gazette.

17. If any extra-provincial corporation coming within class V. or VI. shall, contrary to the provisions of section 6 hereof, carry on in Manitoba any part of its business, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit or other proceeding in any court in Manitoba in respect of any contract made in whole or in part within Manitoba in the course of or in connection with business carried on contrary to the provisions of said section 6; provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit or other proceeding may be maintained as if such license had been granted or restored, or such suspension had been removed, before the institution thereof.

18. If any company, firm, broker, agent or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an extra-provincial corporation, carry on any of its business in Manitoba, such company, firm, broker, agent or other person shall incur a penalty to twenty dollars for every day upon which it, he or they so carry on such business.

19. The Lieutenant-Governor-in-Council may, when or after granting a license remit in whole or in part any penalty incurred under this Act by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable.

20. The penalties imposed by this Act shall be recoverable only by action in a civil Court of competent jurisdiction at the suit of or brought with the written consent of the Attorney-General of Manitoba, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards.

21. For a license to a corporation coming within class V. or VI., such corporation shall pay to His Majesty for the public uses of Manitoba such fees as may be fixed by the Lieutenant-Governor-in-Council, and no license shall be issued until the fee therefor is paid, provided that, with respect to a company carrying on business in Manitoba when this Act is passed, and carrying on also an established business outside of Manitoba, the Lieutenant-Governor-in-Council may reduce the fee payable for its license to such sum as he may think just, having regard to the nature and importance of its business in Manitoba and the amount of capital used therein; provided also that, with respect to a company not carrying on business in Manitoba when this Act is passed, but carrying on outside of Manitoba an established business, when applying for a license under this Act, the Lieutenant-Governor-in-Council may reduce the fee payable for such license to such sum as he may think just, having regard to the nature and importance of the business proposed to be carried on in Manitoba and the amount of capital proposed to be used therein. A company seeking a reduction under this section shall give to the Provincial Secretary such statements and information respecting its business and financial position as he may call for, and shall verify the same in such manner as he may require. There shall be paid to His Majesty for the public uses of Manitoba, upon transmitting to the Provincial Secretary the statement required by section 15 hereof, the fee of five dollars if the capital stock of the company does not exceed the sum of one hundred thousand dollars, and a fee of ten dollars if the capital stock of the company exceeds the said sum of one hundred thousand dollars, and until such fee has been paid such statement shall be deemed not to have been made and transmitted as required by the said section.

22. An extra-provincial corporation which is not required by this Act to take out a license, may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate and otherwise dispose of or lend money on the security of real estate in Manitoba, and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under "The Manitoba Joint Stock Companies Act," with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to His Majesty for the public uses of Manitoba, such fee as the Lieutenant-Governor may prescribe, and compliance with section 15 hereof may be dispensed with by the Lieutenant-Governor in whole or in part. Any such license obtained by any such corporation shall be deemed to ratify and confirm all previous acts of the corporation, and shall be construed as if such license had been granted before such corporation commenced to carry on business in Manitoba; saving all matters or things which shall have been questioned before the taking out of such license by proceedings commenced in any court of law in this Province.

23. A statement showing the licenses issued under this Act during the preceding calendar year, and the authorized capital stocks of the companies licensed, and the fee paid for each license, shall be laid before the Legislature at such session thereof.

EVIDENCE OF LICENSE.

24. A certificate under the hand of the Provincial Secretary or Deputy Provincial Secretary of the issue of such license shall be received as prima facie evidence in all courts of justice and other tribunals, that such license has been duly issued and is in force; and the Provincial Secretary or Deputy Provincial Secretary shall furnish such certificate to any person on payment of a fee of one dollar.

25. Notice of the passing of this Act, in such form and with such particulars thereof as the Provincial Secretary may think proper, shall be published by him in the Manitoba Gazette and in The Canada Gazette and in the official gazette or other official publication of each Province of Canada for such time as to him may seem best.

26. "The Foreign Corporations Act," being chapter 28 of the Revised Statutes of Manitoba, 1902, is hereby repealed.

27. This Act shall come into force on and after the first day of November, A.D. 1909.

TARIFF OF FEES.

Public notice is hereby given that, by Order-in-Council bearing date the twenty-eighth day of July, A.D. 1909, a new tariff of fees, for the issue of licenses under "The Foreign Corporations Act" and "An Act respecting the Licensing of Extra-Provincial Companies," was brought into force, as follows:

When the capital stock does not exceed.....	\$ 5,000.....	\$ 15
Over \$ 5,000 and not exceeding.....	20,000.....	40
Over 20,000 and not exceeding.....	40,000.....	60
Over 40,000 and not exceeding.....	60,000.....	75
Over 60,000 and not exceeding.....	80,000.....	90
Over 80,000 and not exceeding.....	100,000.....	100
Over 100,000 and not exceeding.....	125,000.....	110
Over 125,000 and not exceeding.....	150,000.....	120
Over 150,000 and not exceeding.....	175,000.....	130
Over 175,000 and not exceeding.....	200,000.....	140
Over 200,000 and not exceeding.....	300,000.....	150
Over 300,000 and not exceeding.....	400,000.....	160
Over 400,000 and not exceeding.....	500,000.....	175
Over 500,000 and not exceeding.....	1,000,000.....	200
Over 1,000,000, \$20 for each additional \$100,000 or fraction thereof.		

I GEO. V. c. 10.

An Act to amend "An Act respecting the Licensing of Extra-Provincial Corporations."

(Assented to March 24th, 1911.)

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows: -

1. All licenses heretofore granted under "An Act respecting the Licensing of Extra-Provincial Corporations," being chapter 10 of 9 Edw. VII., to companies or corporations incorporated by or under the authority of a statute of any of the other Provinces of Canada, in which Provinces companies incorporated under the laws of Manitoba are denied similar licenses or privileges to do business in such Provinces, are hereby declared null and void, and all said companies are hereby replaced in the position they would have occupied under the said Act if they had not received such licenses.

2. Every extra-provincial corporation incorporated by or under the authority of an Act of the Legislature of any other Province of Canada applying hereafter for a license under said Act shall, in addition to the other formalities required, produce evidence to show that similar licenses or privileges are granted to Manitoba companies in the Province where the head office of such company is situated.

3. This Act shall come into force on proclamation of the Lieutenant-Governor-in-Council.

SASKATCHEWAN.

An Act respecting Foreign Companies.

Revised Statutes of Saskatchewan, 1900, chapter 73; Amended 1911, 1 Geo. V., c. 17.

SHORT TITLE.

1. This Act may be cited as "*The Foreign Companies Act*," 1903, c. 14, s. 1.

INTERPRETATION.

2. In the construction of this Act and of any rules or forms made in pursuance thereof the expression:

(1) "Foreign company" means any company or association incorporated otherwise than by or under the authority of any Ordinance or Act for the purpose of carrying on any business to which the legislative authority of the Legislature of Saskatchewan extends;

(2) "Registrar" means registrar of joint stock companies and shall include a deputy registrar and an acting registrar;

(3) "Charter" means the Statute, Act or other provision of law by or under which a foreign company is incorporated and any amendments thereto applying to such company, or the memorandum of association or agreement or deed of settlement of the company or the letters patent or charter of incorporation or the license or certificate of registration of the company, as the case may be;

(4) "Charter and regulations" means the charter and the articles of association and all by-laws, rules and regulations of the company;

(5) "Court" means the Supreme Court of Saskatchewan;

(6) "Judge" means a judge of the said Court. 1903, c. 14, s. 2.

3. Unless otherwise provided by any Act no foreign company having gain for its object or a part of its object shall carry on any part of its business in Saskatchewan unless it is duly registered under this Act.

(2) Any unregistered foreign company carrying on business and any company, firm, broker or other person carrying on business as a representative or on behalf of such unregistered foreign company shall be liable on summary conviction to a penalty of \$50 for every day on which such business is carried on in contravention of this section and proof of compliance with the provisions of this section shall at all times be upon the accused.

(3) The taking orders by travellers for goods, wares or merchandise to be subsequently imported into Saskatchewan to fill such orders or the buying or selling of such goods, wares or merchandise by correspondence if the company has no resident agent or representative and no warehouse, office or place of business in Saskatchewan the onus of proving which shall in any prosecution under this section rest on the accused, shall not be deemed to be carrying on business within the meaning of this Act. 1903, c. 14, s. 3; 1903 (2), c. 19, s. 1.

"4. Any foreign company may become registered on compliance with the provisions of this Act and on payment to the registrar of the fees set out in schedule A hereto." (1911, 1 Geo. V. c. 17, s. 1)

5. Before the registration of any foreign company the company shall file in the office of the registrar:

(a) A true copy of the charter and regulations of the company verified in manner satisfactory to the registrar;

- (b) An affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter;
- (c) A copy of the last balance sheet of the company or a statement containing the information required to be given in the annual statement made under the provisions of section 8;
- (d) A duly executed power of attorney under its common seal approved by the registrar empowering some person therein named and residing in Saskatchewan to act as its attorney for the purpose of accepting service of process in all suits and proceedings against the company within Saskatchewan and of receiving all lawful notices and declaring that service of process in respect of such suits and proceedings and of such notices on the said attorney shall be legal and binding to all intents and purposes whatever and waiving all claims of error by reason of such service; and such company may from time to time by a new or other power of attorney executed and deposited as aforesaid appoint another attorney within Saskatchewan for the purposes aforesaid to replace the attorney formerly appointed. 1903, c. 14, s. 5.

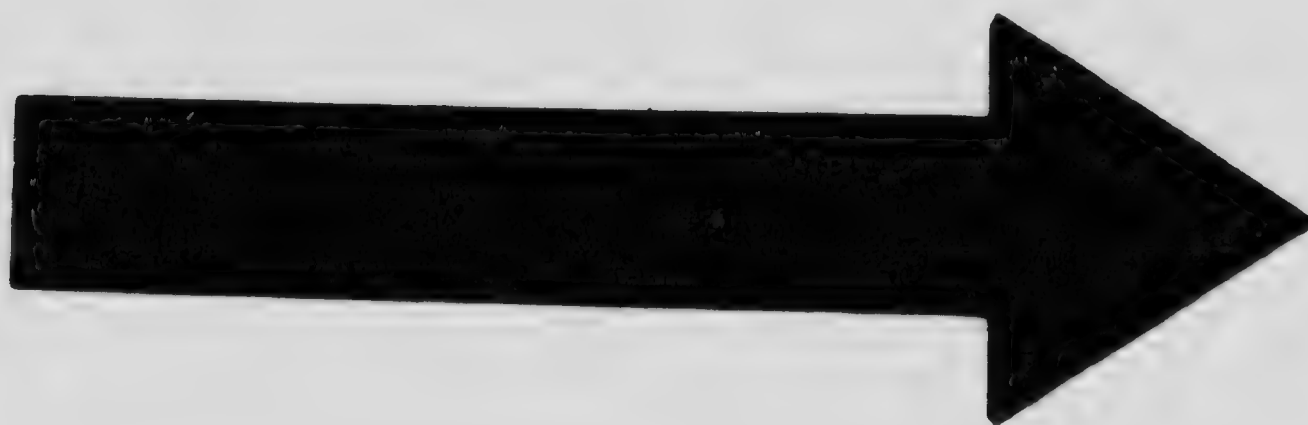
6. Upon compliance by any foreign company with the terms of this Act the registrar shall register such company and issue a certificate of registration; and such certificate of registration shall be conclusive evidence that all the requirements of this Act preliminary to the issue thereof have been complied with.

(2) Such certificate of registration shall be published by the registrar at the expense of the company in *The Saskatchewan Gazette*. 1903, c. 14, s. 6.

7. The certificate of registration or any copy thereof certified under the hand and seal of the registrar or a copy of *The Saskatchewan Gazette* containing such certificate of registration shall be prima facie evidence of the due registration of the company as aforesaid. 1903, c. 14, s. 7.

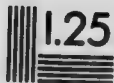
8. A company registered under this Act shall, on or before the first of March in each year during the continuance of such registration, make a statement to the registrar verified by affidavit containing, as of the thirty-first day of December preceding, a summary of the following particulars:

- (a) The corporate name of the company;
- (b) The place where the head office of the company is situated;
- (c) The place or places where or from which the undertaking of the company is carried on;
- (d) The name, residence and post office address of the president, the secretary and the treasurer of the company;
- (e) The name, residence and post office address of each of the directors of the company;
- (f) The date upon which the last annual meeting of the company was held;
- (g) The amount of the capital of the company and the number of shares into which it is divided;
- (h) The number of shares subscribed for and allotted;
- (i) The amount of stock, if any, issued free from call; if none is so issued the fact is to be stated;
- (j) The amount issued subject to call;
- (k) The number of calls made on each share;
- (l) The total amount of calls received;
- (m) The total amount of calls unpaid;
- (n) The total amount of shares forfeited;
- (o) The total amount of shares which have never been allotted or subscribed for;



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(p) The total amount for which shareholders of the company are liable in respect of the unpaid stock held by them;

(q) In a concise form such further information respecting the affairs of the company as the directors may consider expedient.

(2) The summary in the next preceding sub-section mentioned shall be verified by the affidavit of the president and the secretary; or if there is no president or he is unable to make the same by the affidavit of the secretary and one of the directors; or if there is no secretary or he is unable to make such affidavit by the affidavit of the president and one of the directors; or if there is neither a president nor a secretary or they are both unable to make such affidavit by the affidavit of two of the directors; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit.

(3) The filing with the registrar of an annual return in the form and at the time and verified in the manner required by the provisions of sections 28 to 33 inclusive, of *The Insurance Act*, being chapter 34 of *The Revised Statutes of Canada, 1906*, shall relieve any company licensed under the said Act from compliance with the provisions of sub-sections (1) and (2) of this section.

(4) The registrar may at any time require the company to supply such further and other information as shall seem to him to be reasonable and proper.

(5) Any company making default in complying with the provisions of this section shall be liable on summary conviction to a penalty of \$20 for each and every day during which default continues; and every director, manager, secretary, agent, traveller or salesman of such company who transacts within Saskatchewan any business whatever for such company shall be liable on summary conviction to a penalty of \$20 for each day upon which he so transacts such business.

"(6) The statement or return required by this section shall be accompanied with a fee of five dollars in the case of companies with a capital stock not exceeding fifty thousand dollars and by a fee of ten dollars when the capital stock exceeds that amount." (1911, 1 Geo. V. c. 17, s. 2.)

Sa. All foreign companies not being exclusively engaged in the business of banking, insurance, express, railways, telephone, telegraph, trust, loan, land and investment, building, contracting, agency, farming, ranching, recreation and employment or such other business as may from time to time be determined by the Lieutenant-Governor-in-Council shall pay to the Registrar not later than the first day of January in each year an annual fee based on the amount of the nominal capital of such company as set forth in schedule "B" hereto. (1911, 1 Geo. V. c. 17, s. 3.)

9. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual for any reason or if other service cannot be effected the Court or Judge may order substitutional service of any process, proceeding, notice or document upon the company to be made by such publication as is deemed requisite to be made in the premises for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process, proceeding, notice or document. 1903, c. 14, s. 9.

10. Any foreign company required by this Act to become registered shall not while unregistered be capable of maintaining any action or other proceeding in any court in respect of any contract made in whole or in part in Saskatchewan in the course of or in connection with business carried on without registration contrary to the provisions of section 3 hereof.

(2) In any action or proceeding the burden of showing that it is registered shall be upon the company. 1903, c. 14, s. 10.

11. Any foreign company registered under this Act may sue and be sued in its corporate name; and if not prohibited from so doing by its charter and regulations may acquire and hold lands in Saskatchewan by gift, purchase or as mortgagees or otherwise as fully and freely as private individuals; and may sell, lease, mortgage, or otherwise alienate the same. 1903, c. 14, s. 11.

12. Every foreign company registered as a company under this Act shall, subject to the provisions of its charter and regulations and of this Act have and may exercise all the rights, powers and privileges by *The Companies Act* granted to and conferred upon companies incorporated thereunder; and every such foreign company and the directors, officers and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out and perform every act, matter, obligation and duty by *The Companies Act* prescribed and imposed upon companies incorporated thereunder or upon the directors, officers and members thereof. 1903, c. 14, s. 12.

13. No license fee shall be imposed by any municipal council upon any company registered under this Act. 1903, c. 14, s. 13.

14. Notwithstanding anything heretofore contained in this Act any foreign company holding a license to carry on business in Saskatchewan under the provisions of any law in that behalf shall, upon surrendering such license to the registrar, be entitled to be registered under this Act without compliance with any further provisions hereof. 1903, c. 14, s. 14.

15. The Lieutenant-Governor in Council may by Order in Council, notice of which shall be published in *The Saskatchewan Gazette*, suspend or revoke the registration of any foreign company which refuses or fails to keep a duly appointed attorney within Saskatchewan or to comply with any provision of this Act; and notwithstanding such suspension or revocation the rights of creditors of the company shall remain as at the time of such suspension or revocation.

(2) The Lieutenant-Governor-in-Council may likewise by order, notice of which shall be published in the said gazette, remove any such suspension or cancel any such revocation and restore any registration so suspended or revoked. 1903, c. 14, s. 15.

FORMS.

16. The Lieutenant-Governor-in-Council may prescribe and from time to time alter forms of certificates, powers of attorney, applications, statements, returns and other documents relating to applications and other proceedings under this Act. 1903, c. 14, s. 16.

17. This Act shall not apply to the corporation known as "The Governor and Company of Adventurers of England trading into Hudson's Bay." 1903, c. 14, s. 17.

SCHEDULE "A."

Table of fees to be paid to the Registrar by a company registered under this Act:

For registration of a company whose nominal capital does not exceed \$20,000	\$ 40.00
For registration of a company whose nominal capital exceeds \$20,000 the above fee of \$40 with the additional fees regulated according to the amount of capital, that is to say:	
For every \$5,000 or part of \$5,000 after the first \$20,000 up to \$100,000	5.00
For every \$10,000 or part of \$10,000 after the first \$100,000 up to \$500,000	3.00
For every \$100,000 or part of \$100,000 thereafter up to \$1,000,000	20.00
For registration of any increase of capital made after the first registration of the company the same fees as would have been payable if such increased capital had formed part of the original capital at the time of registration.	
For registering change of name	5.00
For registering change of Power of Attorney	5.00

The fee for publishing the registration in the *Saskatchewan Gazette* is included in the above fees.

SCHEDULE "B."

Table of annual fees to be paid to the Registrar by all companies not exempt under section 8a hereof:

Companies with a capital not exceeding \$25,000.....	\$ 10.00
Companies with a capital exceeding \$25,000 but not exceeding \$50,000	20.00
Companies with a capital exceeding \$50,000 but not exceeding \$100,000	40.00
Companies with a capital exceeding \$100,000 but not exceeding \$500,000	50.00
Companies with a capital exceeding \$500,000.....	75.00

ALBERTA.

Foreign Companies Ordinance.

Being chapter 14 of the Ordinances of the North-West Territories of 1903 (First Session), as amended by chapter 19 of the Ordinances of the North-West Territories 1903 (Second Session), and as further amended by chapter 5, Statutes of Alberta, 1907, chapter 20, 1908, and chapter 4, 1909.

The Lieutenant-Governor, by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

1. This Ordinance may be cited as "The Foreign Companies Ordinance, 1903."

INTERPRETATION.

2. In the construction of this Ordinance and of any rules or forms made in pursuance thereof:

- (1) "Foreign Company," shall mean any company or association incorporated otherwise than by or under the authority of the Ordinance of the Territories, for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends;
- (2) "Registrar" shall mean registrar of joint stock companies, and shall include a deputy registrar and an acting registrar;
- (3) "Charter" shall mean the Statute, Ordinance, or other provision of law by or under which a foreign company is incorporated, and any amendments thereto applying to such company, or the memorandum of association, or agreement or deed of settlement of the company, or the letters patent or charter of incorporation, or the license or certificate of registration of the company as the case may be;
- (4) "Charter and regulations" shall mean the charter and the articles of association and all by-laws, rules and regulations of the company;
- (5) "Court" shall mean the Supreme Court of the North-West Territories;
- (6) "Judge" shall mean judge of the said Court.

3. Unless otherwise provided by any Ordinance, no foreign company having gain for its object, or a part of its object, shall carry on any part of its business in the Territories unless it is duly registered under this Ordinance.

- (2) Any unregistered foreign company carrying on business, and any company, firm, broker or other person carrying on business as a

representative or on behalf of such unregistered foreign company, shall be liable on summary conviction to a penalty of \$50 for every day on which such business is carried on in contravention of this section, and proof of compliance with the provisions of this section shall at all times be upon the accused.

- (3) The taking of orders by travellers for goods, wares or merchandise to be subsequently imported into the Territories to fill such orders or the buying or selling of such goods, wares or merchandise by correspondence, if the company has no resident agent or representative and no warehouse, office or place of business in the Territories, the onus of proving which shall in any prosecution under this section rest on the accused shall not be deemed to be carrying on business under the meaning of this Ordinance, 1903, 3 Edw. VII. (1st Session) c. 14, s. 3, amended 1903, 3 Edw. VII. (2nd Session) c. 19, s. 1.

4. Any foreign company described in Schedule B hereto may become registered on compliance with the provisions of this Ordinance, and on payment to the registrar of the fees set out in Schedule A hereto, and shall, subject to the provisions of its charter and regulations, and to the terms of registration thereupon, have the same powers and privileges in the province as if incorporated under the provisions of the Companies Ordinance, 1908, 8 Edw. VII., c. 20, s. 4.

4a. Any other foreign company may become registered on compliance with the provisions of this Ordinance, and shall, subject to the provisions of its charter and regulations, and to the terms of registration thereupon, have the same powers and privileges in the province as if incorporated under the provisions of the Companies Ordinance.

(2) All other foreign companies save those described in schedule B hereto shall pay to the registrar an annual fee of fifty dollars during the continuance of their registrations respectively under this Ordinance, such fee to be payable on the first day of January in each year; but in the event of such a foreign company becoming registered after the first day of January in any year, the amount payable to the registrar for such portion of the first year during which it is so registered, shall be a proportionate part only of the amount required for one year, and such proportionate part shall be so payable upon the registration of the company.

Provided, however, that any foreign company, whether described in schedule B hereto or not, may become registered as aforesaid on payment to the registrar of the fees set out in schedule A hereto, and upon so doing the provisions of this sub-section shall not apply to such foreign company. 1908, 8 Edw. VII., c. 2, s. 4; 1909, 9 Edw. VII., c. 4, s. 5.

5. Before the registration of any foreign company, the company shall file in the office of the registrar:

- (a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the registrar;
- (b) An affidavit or statutory declaration that the company is still in existence, and is legally authorized to transact business under its charter;
- (c) A copy of the last balance sheet of the company or a statement containing the information required to be given in the annual statement made under the provisions of section 8;
- (d) A duly executed power of attorney under its common seal, approved by the registrar empowering some person therein named and residing in the Territories, to act as its attorney for the purpose of accepting service of process in all suits and proceedings against the company within the Territories, and of receiving all lawful notices and declaring that service of process in respect of such suits and proceedings, and of such notices on the said attorney, shall be legal and binding to all intents and purposes whatever and waiving all claims of error by reason of such service; and such company may from time to time by a new or other power of attorney executed

and deposited as aforesaid, appoint another attorney within the Territories for the purposes aforesaid to replace the attorney formerly appointed.

6. Upon compliance by any foreign company with the terms of this Ordinance, the registrar shall register such company and issue a certificate of registration; and such certificate of registration shall be conclusive evidence that all the requirements of this Ordinance preliminary to the issue thereof have been complied with.

(2) Such certificate of registration shall be published by the Registrar at the expense of the company in the official gazette.

7. The certificate of registration, or any copy thereof certified under the hand and seal of the Registrar, or a copy of the gazette containing such certificate of registration, shall be prima facie evidence of the due registration of the company as aforesaid.

8. A company registered under this Ordinance shall, on or before the first of March in each year during the continuance of such registration, make a statement to the registrar verified by affidavit containing as of the thirty-first day of December preceding a summary of the following particulars:

- (a) The corporate name of the company;
- (b) The place where the head office of the company is situated;
- (c) The place or places where or from which the undertaking of the company is carried on;
- (d) The name, residence and post office address of the president, the secretary and the treasurer of the company;
- (e) The name, residence and post office address of each of the directors of the company;
- (f) The date upon which the last annual meeting of the company was held;
- (g) The amount of the capital of the company and the number of shares into which it is divided;
- (h) The number of shares subscribed for and allotted;
- (i) The amount of stock, if any, issued free from call; if none is so issued, the fact is to be stated;
- (j) The amount issued subject to call;
- (k) The number of calls made on each share;
- (l) The total amount of calls received;
- (m) The total amount of calls unpaid;
- (n) The total amount of shares forfeited;
- (o) The total amount of shares which have never been allotted or subscribed for;
- (p) The total amount for which shareholders of the company are liable in respect of the unpaid stock held by them;
- (q) In concise form such further information respecting the affairs of the company as the directors may consider expedient.

(2) The summary in the next preceding subsection mentioned shall be verified by the affidavit of the president and secretary; or if there is no president or he is unable to make the same by the affidavit of the secretary and one of the directors; or if there is no secretary or he is unable to make such affidavit by the affidavit of the president and one of the directors; or if there is neither a president nor secretary or they are both unable to make such affidavit by the affidavit of two of the directors; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit.

(3) The filing with the registrar of an annual return in the form and at the time verified in manner required by sections 19 and 20 of The Insur-

ance Act, being chapter 124 of the Revised Statutes of Canada, shall relieve any company licensed under the said Act from compliance with the provisions of subsections (1) and (2) of this section.

(4) The registrar may at any time require the company to supply such further and other information as shall seem to him to be reasonable and proper.

(5) Any company making default in complying with the provisions of this section shall be liable on summary conviction to a penalty of \$20 for each and every day during which default continues; and every director, manager, secretary, agent, traveller or salesman of such company who transacts within the Territories any business whatever for such company shall be liable on summary conviction to a penalty of \$20 for each day upon which he so transacts such business.

(6) The statement or return required by this section shall be accompanied with the fee of \$5.00.

9. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual for any reason, or if other service cannot be effected the court or judge may order substitutional service of any process, proceeding, notice or document upon the company to be made by such publication as is deemed requisite to be made in the premises for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process, proceeding, notice or document.

10. Any foreign company required by this Ordinance to become registered shall not while unregistered be capable of maintaining any action or other proceeding in any court in respect of any contract made in whole or in part in the Territories in the course of or in connection with business carried on without registration contrary to the provisions of section 3 hereof.

(2) In any action or proceeding, the burden of showing that it is registered shall be upon the company.

11. Any foreign company registered under this Ordinance, may sue and be sued in its corporate name; and if not prohibited from so doing by its charter and regulations, may require and hold lands in the Territories by gift, purchase, or as mortgagee or otherwise as fully and freely as private individuals; and may sell, lease, mortgage or otherwise alienate the same.

12. Every foreign company registered as a company under this Ordinance shall subject to the provisions of its charter and regulations and of this Ordinance have and may exercise all the rights, powers and privileges by The Companies Ordinance granted to and conferred upon companies incorporated thereunder; and every such foreign company, and the directors, officers and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out and perform every act, matter, obligation and duty by The Companies Ordinance prescribed and imposed upon companies incorporated thereunder or upon the directors, officers and members thereof.

13. No license fee shall be imposed by any municipal council upon any company registered under this Ordinance.

14. Notwithstanding anything heretofore contained in this Ordinance, any foreign company holding a license to carry on business in the Territories under the provisions of any Ordinance in that behalf shall upon surrendering such license to the registrar be entitled to be registered under this Ordinance without compliance with any further provisions hereof.

15. The Lieutenant-Governor-in-Council may by Order-in-Council notice of which shall be published in the gazette, suspend or revoke the registration of any foreign company which refuses or fails to keep a duly appointed attorney within the Territories or to comply with any provision of

this Ordinance; and notwithstanding such suspension or revocation the rights of creditors of the company shall remain as at the time of such suspension or revocation.

(2) The Lieutenant-Governor-in-Council may likewise by Order notice of which shall be published in the official gazette remove any such suspension or cancel any such revocation and restore any registration so suspended or revoked.

FORMS.

16. The Lieutenant-Governor-in-Council may prescribe and from time to time alter forms of certificates, powers of attorney, applications, statements, returns and other documents relating to applications and other proceedings under this Ordinance.

17. This Ordinance shall not apply to the corporation known as "The Governor and Company of Adventurers of England trading into Hudson's Bay," nor to any telegraph company or companies incorporated by or under the authority of the Parliament of Canada, and operated in connection with a line or lines of railway constructed or operated under the authority of an Act of the Parliament of Canada. 1903, 3 Edw. VII., c. 14, s. 17; amended 1900, 9 Edw. VII., c. 4, s. 5.

REPEAL.

18. Chapter 63 of the Consolidated Ordinances 1898, intituled an Ordinance respecting Foreign Corporations and chapter 18 of the Ordinances of 1900 amending the same are hereby repealed.

SCHEDULE A.

Fees Payable on Registration.

For companies with a capitalization not exceeding \$100,000.....	\$ 75 00
Exceeding \$100,000, but not exceeding \$200,000.....	125 00
Exceeding \$200,000, but not exceeding \$500,000.....	300 00
Exceeding \$500,000, but not exceeding \$1,000,000.....	450 00
Exceeding \$1,000,000, but not exceeding \$3,000,000.....	500 00
For every additional \$1,000,000 or fractional part thereof over \$3,000,000, an additional sum of ..	100 00

NOTE.—To these fees \$5 should be added for advertising.

SCHEDULE B.

The following companies shall, upon applying to the registrar for registration, be liable for the payment of the fees as prescribed in schedule A hereto:

Fire and Life Insurance Companies, but not including Mutual Insurance Companies.

Accident Insurance Companies.
Express Companies.
Telephone Companies.
Telegraph Companies.
Trust Companies.
Loan Companies.
Building Companies.
Contracting Companies.
Land Companies.
Ranching Companies.
Gas Companies.
Oil Companies.
Coal Companies.
Implement Companies.

BRITISH COLUMBIA.

An Act to revise and consolidate the "Companies Act, 1897," and amending Acts.

1910, 10 Edw. VII. c. 7; Amended 1911, 1 Geo. V. c. 8.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

SHORT TITLE.

1. This Act may be known and cited as the "Companies Act."

INTERPRETATION, &c.

2.

"Extra-Provincial Company" means any duly incorporated company other than a company incorporated under the laws of the Province of British Columbia, or the former Colonies of British Columbia and Vancouver Island;

"Charter" of a company shall mean the Act, Statute, Ordinance or other provision of law by or under which the company is incorporated, and any amendments thereto applying to such company, whether of this or of any other Province, or of the Dominion of Canada, or of the United Kingdom, or of any colony or dependency thereof, or of any foreign state or country, the memorandum of association or agreement or deed of settlement of the company, and the letters patent or charter of incorporation, and the license or certificate of registration of the company, as the case may be;

"Charter and regulations" of a company shall mean the charter of the company and the articles of association, and all by-laws, rules and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company;

PART VI.

LICENSING AND REGISTRATION OF EXTRA-PROVINCIAL COMPANIES.

General.

139. Every extra-provincial company having gain for its purpose and object within the scope of this Act is hereby required to be licensed or registered under this or some former Act, and no company, firm, broker or other person shall, as the representative or agent of or acting in any other capacity for any such extra-provincial company, carry on any of the business of an extra-provincial company, within this Province until such extra-provincial company shall have been licensed or registered as aforesaid.

This section shall apply to an extra-provincial company notwithstanding that it was heretofore registered as a foreign company under the provisions of any Act, 1898, c. 13, s. 5; R. S., B. C., c. 44, s. 123.

140. The Registrar may for good cause shown dispense with the filing by an extra-provincial company, proceeding to obtain a license or registration under the provisions of this Part, of one or more of the documents which comprise its charter and regulations, and may allow to be substituted therefor a list of the documents so dispensed with, accompanied by a statement of the reasons for dispensing with the originals, and (if he so require) by such memorandum of the contents of such originals as he may deem sufficient. 1898, c. 12 s. 6.

141. Any extra-provincial company licensed or registered under this Part may sue and be sued in its corporate name, and, if authorized so to do by its charter and regulations, may acquire and hold lands in British Columbia by gift, purchase, or as mortgagees or otherwise, as fully and as freely as private individuals, and may sell, lease, mortgage or otherwise alienate the same. R. S., B. C., c. 44, s. 138.

142. Every extra-provincial company registered as a company under this Act shall, subject to the provisions of its charter and regulations, and of this Act, have and may exercise all the rights, powers and privileges by this Act granted to and conferred upon companies incorporated thereunder; and every such extra-provincial company and the directors, officers and members thereof shall be subject to and shall, subject as aforesaid, observe, carry out and perform every act, matter, obligation and duty by this Act prescribed and imposed upon companies incorporated thereunder, or upon the directors, officers and members thereof. R. S., B. C., c. 44, s. 139.

143. Every extra-provincial company registered under this Part shall, in and by the power of attorney hereinafter prescribed, empower its attorney to issue and transfer shares of the company.

Every such extra-provincial company shall, at its head office or chief place of business in this Province, provide and keep, in form and manner provided by section 33 of this Act, a register of all shares issued at such head office or chief place of business, and of all transfers of shares in the company made within this Province and presented for record at such head office or chief place of business; and every lawful transfer of shares made by a member shall, upon entry and record on such register, be valid and binding to all intents and purposes; and every act, matter or thing lawfully done by the attorney of the company pursuant to this section shall be as valid and binding in all respects as if done by the company or the directors, managers or officers of the company, pursuant to the provisions of the charter and regulations of the company and of this Act in that behalf. R. S., B. C., c. 44, s. 140.

144. Every extra-provincial company duly incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, heretofore registered in this Province as a foreign company under the provisions of any Act, may surrender to the Registrar the certificate of registration of the company issued under such Act and obtain from him a license under the provisions of this Part; and for the purpose of obtaining such license the surrender of such certificate of registration and the filing of the power of attorney prescribed by clause (d) of section 154 of this Act shall be deemed to be a sufficient compliance with the requirements of this Part. R. S., B. C., c. 44, s. 141; 1898, c. 13, s. 10.

145. Every extra-provincial company registered in this Province before the passage of the "Companies Act, 1897," as a foreign company under the provisions of any Act in that behalf (other than a company entitled to obtain, and which has obtained, or may obtain a license under this Part), and the directors, officers and members thereof shall be subject to and shall observe, carry out and perform every act, matter, obligation and duty by this Act prescribed, and imposed upon companies incorporated thereunder, or upon the directors, officers and members thereof. 1898, c. 13, s. 12.

146. In case of any suit or other proceeding being commenced by any extra-provincial company against any person or corporation residing or

carrying on business in this Province, such extra-provincial company shall furnish security for costs, if demanded. R. S., B. C., c. 44, s. 144.

147. Nothing contained in this Part of this Act shall authorize the registration of any Chinese or Japanese company or association. 1897, c. 2, s. 145.

148. The Lieutenant-Governor in Council may, by an Order in Council, to be published in three consecutive issues of the Gazette, suspend or revoke and make null and void any license granted or any registration effected, under this Part, to any company which refuses or fails to keep a duly appointed attorney within the Province, or to comply with any of the provisions of this Part, and notwithstanding such suspension or revocation, the rights of creditors of the company shall remain as at the time of such suspension or revocation. R. S., B. C., c. 44, ss. 131, 137.

149. The license issued in pursuance of section 144 of this Act, or the certificate issued in pursuance of section 162, to an extra-provincial company heretofore registered as a foreign company need not contain in detail the objects of the company, but may incorporate them by reference to the former certificate of registration of the company. 1898, c. 13, s. 11.

LICENSING OF EXTRA-PROVINCIAL COMPANIES.

153. Any extra-provincial company duly incorporated under the laws of
- (a) Great Britain and Ireland;
 - (b) The Dominion of Canada;
 - (c) The former Province of Canada;
 - (d) Any of the Provinces of the Dominion of Canada; and
 - (e) Any insurance company

duly authorised by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, to obtain a license from the Registrar authorising it to carry on business within this Province on compliance with the provisions of this Act, and on payment to the Registrar in respect of the several matters mentioned in the table marked "B" in the First Schedule hereto the several fees therein specified, and shall, subject to the provisions of the charter and regulations of the company, and to the terms of the license, thereupon have the same powers and privileges in this Province as if incorporated under this Act. R. S., B. C., c. 44, s. 124.

154. Before the issue of a license to any such extra-provincial company, the company shall file in the office of the Registrar

- (a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar, and certifying that the company by its charter has authority to carry on business in the Province of British Columbia; and if any instrument required in the aforesaid is not written in the English language, a duly certified translation thereof;
- (b) An affidavit or statutory declaration that the company is still in existence and legally authorised to transact business under its charter;
- (c) In the case of an insurance company, a copy of the last annual balance sheet and auditor's report thereon;
- (d) A duly executed power of attorney, under its common seal, empowering some person therein named, and residing in the Province or place where the head office of the company in this Province,

situate, to act as its attorney and to sue and be sued, plead or be impleaded, in any Court, and generally on behalf of such company and within the Province to accept service of process and to receive all lawful notices, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney; and such company may from time to time, by a new or other power of attorney executed and filed as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar.

- (e) Notice of the place where the head office without the Province is situate;
- (f) Notice of the city, town, district or county in British Columbia where the head office of the company is proposed to be situate;
- (g) The amount of the capital of the company.
- (h) The number of shares into which it is divided. R. S., B. C., c. 44, s. 127.

155 The license shall set forth—

- (a) The corporate name of the company;
- (b) The place where the head office of the company is situate;
- (c) The place where the head office of the company in this Province is situate;
- (d) The name, address and occupation of the attorney of the company;
- (e) The amount of the capital of the company;
- (f) The number of shares into which it is divided;

and such license shall be conclusive evidence of compliance with all the objects for which the company has been established and licensed, shall be published at the expense of the company for four weeks—

- (g) In the Gazette.

And such license shall be conclusive evidence of compliance with all the requirements of this Act.

Notice of the appointment of a new attorney, or of the company ceasing to carry on business in this Province, shall likewise be published for the time and in manner aforesaid. R. S., B. C., c. 44, s. 128, amended 1 Geo. V., c. 8, s. 21.

156. The license, or a copy thereof certified under the hand and seal of the Registrar, or a copy of the Gazette containing such license, shall be sufficient evidence in any proceeding in any Court in this Province of the due licensing of the company aforesaid. R. S., B. C., c. 44, s. 129.

157. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service cannot readily be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding. R. S., B. C., c. 44, s. 130.

158. Repealed 1911; 1 Geo. V., c. 8, s. 22.

REGISTRATION OF EXTRA-PROVINCIAL COMPANIES.

159. Any other extra-provincial company, duly authorised by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may register the company as a company under this Act on compliance with the provisions of this Part and on payment to the Registrar in respect of the several matters mentioned in the table marked "B" in the First Schedule hereto the several fees therein specified, and such company

shall, subject to the provisions of the charter and regulations of the company, and of this Act, thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act. R. S., B. C., c. 44, s. 132.

100. Any extra-provincial company desiring to become registered as a company under this Act as aforesaid, may petition therefor under the common seal of the company, and a such petition shall file in the office of the Registrar:

- (a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia; and if any instrument included in the aforesaid is not written in the English language, a notarially certified translation thereof;
- (b) An affidavit or statutory declaration that the said company is still in existence and legally authorised to transact business under its charter;
- (c) In the case of an insurance company, a copy of the last balance-sheet and auditor's report thereon;
- (d) A duly executed power of attorney, under its common seal, empowering some person therein named and residing in the city or place where the head office of the company in this Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded, in any Court, and generally, on behalf of such company and within the Province, to accept service of process and to receive all lawful notices, to issue and transfer shares or stock, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney, a such company may from time to time, by a new or other power of attorney, executed and deposited as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar;
- (e) Notice of the place where the head office of the company without the Province is situate;
- (f) Notice of the city, town, district or county in British Columbia where the head office of the company is proposed to be situate;
- (g) The amount of the capital of the company; and
- (h) The number of shares into which it is divided. R. S., B. C., c. 44, s. 133.

101. (1) The Registrar may accept from any extra-provincial company proceeding to obtain registration under the provisions of section 100 of this Act, a power of attorney which varies in substance from that called for by clause (d) of said section, in that it omits to empower the attorney named therein to issue and transfer shares or stock, upon its being shown to his satisfaction either that the company is not a public company, the shares or stock whereof are upon the market, or that although the company is a public company, and the shares or stock thereof are upon the market, yet that, either owing to the small quantity of the shares or stock of the company held in the Province, and to the fact that the company does not propose to place any of the shares or stock upon the market in the Province, or to the fact that the consent of the holders of shares or stock within the Province has been obtained, the preponderance of convenience is in favour of exempting the company from empowering their attorney in the manner specified:

- (a) Such certificate of registration issued to the company under the provisions of section 102 shall state, after the name, address and occupation of the attorney, that such attorney is not empowered to issue or transfer shares or stock;

(b) The company shall thereupon be relieved from compliance with section 143 of this Act.

(2) Any company which has heretofore filed a power of attorney empowering its attorney to issue and transfer shares and stock may have such power of attorney amended on summary application to the Registrar, and on satisfying him as aforesaid, and shall thereafter be relieved in manner aforesaid. The Registrar may direct the amendment to be given publicity in such manner as he may deem necessary. 1898, c. 13, s. 8.

162. The Registrar shall issue to any extra-provincial company registered under this Act a certificate of registration which shall set forth:—

- (a) The corporate name of the company;
- (b) The place where the head office of the company is situate;
- (c) The place where the head office of the company in this Province is situate;
- (d) The name, address and occupation of the attorney of the company;
- (e) The amount of the capital of the company;
- (f) The number of shares into which it is divided, and the amount of each share;
- (g) The time of the existence of the company, if incorporated for a limited period;
- (h) In the case of a limited company, that the company is limited;
- (i) In the case of a mining company, to which the non-personal liability sections of this Act apply, that the liability of the members of the company is so specially limited;

and such certificate, together with a statement by the Registrar of the objects for which the company has been established and registered, shall be published at the expense of the company for four weeks—

(j) In the Gazette;
and such certificate shall be conclusive evidence of compliance with all the requirements of this Act.

And notice of the appointment of a new attorney, or of the company ceasing to carry on business in this Province, shall likewise be published for the time and in manner aforesaid. R. S., B. C., c. 44, s. 134; 1898, c. 13, s. 9; 1900, c. 5, s. 10. Amended 1 Geo. V., c. 8, s. 23.

163. The certificate of registration, or any copy thereof, certified under the hand and seal of the Registrar, or a copy of the Gazette containing such certificate of registration, shall be sufficient evidence in any proceeding in any Court in this Province of the due registration of the company as aforesaid. R. S., B. C. c. 44, s. 135.

164. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service cannot readily be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding. R. S., B. C., c. 44, s. 136.

165. No act, matter, disposition or thing affecting the corporate rights and property of the company within this Province, made, done or executed by any extra-provincial company entitled to registration only under this Part, although valid by the laws of the country or state under which such company is incorporated, or permissible under its original corporate powers, shall be of any force or effect, or enforceable by the company or any one on its behalf by action in any Court in this Province, unless such act, matter, disposition or thing be valid and permissible by the laws of British Columbia. R. S., B. C., c. 44, s. 143.

DISABILITIES AND PENALTIES.

166. If any extra-provincial company shall, without being licensed or registered pursuant to this Part, carry on in the Province of British Columbia any part of its business, such extra-provincial company shall be liable to a penalty of fifty dollars for every day upon which it so carries on business, and so long as it remains unlicensed or unregistered under this Act, it shall not be capable of maintaining any action, suit or other proceeding in any Court in British Columbia in respect of any contract made in whole or in part within this Province in the course of or in connection with its business, contrary to the requirements of this Part:

Provided, however, that upon the granting or restoration of the license or the issuance or restoration of the certificate of registration or the removal of any suspension of either the license or the certificate, any action, suit or other proceeding may be maintained as if such license or certificate had been granted or restored, or such suspension removed before the institution of any such action, suit or other proceedings.

167. No extra-provincial company shall be capable of acquiring or holding lands or any interest therein in British Columbia, or registering any title thereto under the "Land Registry Act," unless duly licensed or registered under this Act:

Provided, however, that the granting of a license or certificate or registration shall operate as a removal of any disability under this section.

168. If any company, firm, broker or other person acting as the agent or representative of, or in any other capacity for an extra-provincial company not licensed or registered under this Act shall carry on any of its business contrary to the requirements of this Part, such company, firm, broker, agent or other person shall be liable to a penalty of twenty dollars for every day it, he or they shall so carry on such business.

169. The Lieutenant-Governor in Council may, when or after a license has been granted or a certificate issued, remit in whole or or part any penalty incurred under this Act by the company receiving the license or the certificate, or by any representative or agent thereof, and may also remit in whole or part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable.

170. The penalties imposed by this Part shall be recoverable only by action at the suit of, or brought with the written consent of the Attorney-General of British Columbia, and any action or proceeding to recover any such penalty shall be commenced within six months after the liability for such penalty has been incurred, and not afterwards.

Provided that in any action to recover any such penalty, the onus of proving that a company is duly licensed or registered under this or some former Act shall be upon the defendant. Am ended 1 Geo. V., c. 8, s. 24.

TABLE B.

Table of Fees to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares.

1. For the registration of a company whose nominal capital does not exceed \$10,000, a fee of..... \$ 25 00
2. For registration of a company whose nominal capital exceeds \$10,000, the above fee of \$25, with the following additional fees, regulated according to the amount of nominal capital, that is to say:—
 For every \$5,000 of nominal capital, or part of \$5,000, after the first \$10,000, up to \$25,000 5 00

For every \$5,000 of nominal capital, or part of \$5,000, after
the first \$25,000, up to \$500,000 \$2 50

For every \$5,000 of nominal capital, or part of \$5,000, after
the first \$500,000 1 25

.....
.....
For a license to or registration of any extra-provincial company, except-
ing an insurance company, the same fees as are payable for incorporating a
new company. In the case of an extra-provincial company having a nominal
capital exceeding four hundred and fifty thousand dollars which proves to
the satisfaction of the registrar that it is actually carrying on an established
business beyond the province in which at least fifty per cent. of its sub-
scribed capital is invested, there shall be accepted in commutation of the
fees prescribed by this table a fee of two hundred and fifty dollars. Amended
1911, 1 Geo. V. c. 8.

YUKON TERRITORY.

An Ordinance respecting Foreign Companies.

Consolidated Ordinances of Yukon Territory (1902), c. 59.

1. This Ordinance may be cited as "The Foreign Companies Ordinance,"
N.W.T. c. 63, s. 1.

FOREIGN COMPANIES, LICENSES, STATEMENTS, ETC.

2. Any company, institution or corporation incorporated otherwise than
by or under the authority of an Ordinance of the Territory or an Act of
Parliament of Canada desiring to carry on any of its business within the
Territory may (through the Territorial Secretary) petition the Commissioner
for a license so to do and the Commissioner may thereupon authorize such
company, institution or corporation to use, exercise or enjoy any powers,
privileges and rights set forth in the said license.

(2) No such license shall be issued until such company, institution or
corporation has deposited in the office of the Territorial Secretary a true copy
of the Act, charter or other instrument incorporating the company, institu-
tion or corporation verified in the manner which may be satisfactory to the
Commissioner together with a duly executed power of attorney empowering
some person therein named and residing in the Territory to act as its
attorney and to sue and be sued, plead or be impleaded in any court and
generally on behalf of such company, institution or corporation and within
the said Territory, to accept service of process and to receive all lawful
notices and for the purposes aforesaid to do all acts and to execute all deeds
and other instruments relating to the matters within the scope of the power
of attorney; and such company, institution or corporation may from time
to time by a new or other power of attorney executed and deposited as
aforesaid, appoint another attorney within the Territory for the purposes
aforesaid to replace the attorney formerly appointed; and notice of the grant-
ing of such license shall be given forthwith by the Territorial Secretary in
the official gazette.

3. The license, or any exemplification thereof under the seal of the
Territory shall be sufficient evidence in any proceeding in any court of the
Territory of the due licensing of the company, institution or corporation as
aforesaid.

4. A company, institution or corporation licensed under this section
shall, on or before the thirty-first day of January in every year during the

continuance of such license make a statement to the Territorial Secretary verified by affidavit containing, as of the thirty-first day of December preceding, a summary of the following particulars:

- (a) The corporate name of the company, institution or corporation;
- (b) The manner in which the company, institution or corporation is incorporated;
- (c) The place where the head office of the company, institution or corporation is situated;
- (d) The place or places where or from which the undertaking of the company, institution or corporation is carried on;
- (e) The name, residence and post office address of the president, the secretary and the treasurer of the company, institution or corporation;
- (f) The name, residence and post office address of each of the directors of the company, institution or corporation;
- (g) The date upon which the last annual meeting of the company, institution or corporation was held;
- (h) The amount of the capital of the company, institution or corporation, and the number of shares into which it is divided;
- (i) The number of shares subscribed for and allotted;
- (j) The amount of stock (if any) issued free from call; if none is so issued, the fact to be stated;
- (k) The amount issued subject to call;
- (l) The number of calls made on each share;
- (m) The total amount of calls received;
- (n) The total amount of calls unpaid;
- (o) The total amount of shares forfeited;
- (p) The total amount of shares which have never been allotted or subscribed for;
- (q) The total amount for which shareholders of the company, institution or corporation are liable in respect of the unpaid stock held by them;
- (r) In a concise form, any further information respecting the affairs of the company, institution or corporation as the directors consider expedient;

(5) The summary in the next preceding sub-section mentioned shall be verified by the affidavit of the president and secretary and if there is no president or he is unable to make the same by the affidavit of the secretary and one of the directors, and if there is no secretary or he is unable to make such affidavit by the affidavit of the president and one of the directors and if there is neither a president or secretary or they are both unable to make such affidavit, by the affidavit of two of the directors and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit.

(6) Any company, institution or corporation making default in complying with the provisions of this section shall be liable to a penalty of \$50 for each and every day during which default continues; and every director, manager, secretary, agent, traveller or salesman of such company, institution or corporation who transacts within the Territory any business whatever for such company, institution or corporation shall, for each day upon which he so transacts such business, on summary conviction thereof before a justice of the peace incur a penalty of \$50, such penalties to belong to the general revenue fund of the Territory.

(7) The Commissioner may by Order (a notice of which shall be published by the Territorial Secretary in the Yukon Official Gazette or otherwise as may be prescribed in said Order) suspend or revoke and make null and void any license granted under this section to any company, institution or corporation which refuses or fails to comply with any of the provisions of this section and (notwithstanding such suspension or revocation) the rights of creditors of the company, institution or corporation shall remain as at the time of such suspension or revocation. N. W. T. c. 62, s. 2.

3. Every company, institution or corporation licensed under this Ordinance shall have written or printed on its prospectuses, notices, advertisements and other official publications and in all bills of parcels, invoices and receipts of the company, institution or corporation immediately after or under the name of such company, institution or corporation and the amount of its paid up capital and every such company, institution or corporation which refuses or neglects to comply with this section shall be liable to a penalty not exceeding \$20 for each such offence; and every director, manager or agent of any company, institution or corporation who knowingly authorizes or permits such default shall on summary conviction thereof be liable to the like penalty, such penalties to belong to the general revenue fund of the Territory. N.W.T. c. 62, s. 3; No. 4 of 1901, s. 2 and 3.

4. The Commissioner may from time to time appoint a person with salary to prosecute any company, institution or corporation making default in complying with the provisions of this Ordinance. No. 4 of 1901, s. 4.

5. No license shall be issued to any company unless such company has paid to the Territorial Treasurer the proper fee according to the tariff of fees in the schedule to this Ordinance provided. No. 6 of 1902, s. 4.

6. No company requiring a license under this Ordinance shall carry on any part of its business in the Yukon Territory until it has been duly licensed under this Ordinance. No. 6 of 1902, s. 5.

7. Any such company carrying on business without being duly licensed, and any company, firm, broker or other persons carrying on business as a representative or on behalf of such company shall be liable on summary conviction to a penalty of \$50 for every day on which such business is carried on in contravention of this section, and proof of compliance with the provisions of this section shall at all times be upon the accused.

(2) The taking orders for or the buying or selling goods, wares and merchandise by travellers or by correspondence if the company has no resident agent or representative, and no office or place of business in the Yukon Territory, the onus of proving which shall in any prosecution under this section rest on the accused, shall not be deemed to be carrying on business within the meaning of this Ordinance. No. 6 of 1902, s. 6.

8. No such company shall while unlicensed, be capable of maintaining any action or other proceeding in any court in respect of any contract made in whole or in part in the Territory, in the course of or in connection with business carried on without a license contrary to the provisions of section 6 hereof.

(2) In any action or proceeding the burden of showing that it is licensed shall be upon the company. No. 6 of 1902, s. 7.

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